ALCOHOL, TOBACCO AND FIREARMS

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quarterly bulletin

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms

T 70.7:

this issue contains

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NOTICE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Trade and Consumer Affairs Division, Washington, D.C. 20226.

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INTRODUCTION

The Alcohol, Tobacco and Firearms Bulletin is the authoritative instrument of the Director, Bureau of Alcohol, Tobacco and Firearms, for announcing official rulings and procedures of the Bureau and for publishing Treasury Decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record.

It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). All rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, industry regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published.

Bureau Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

FOREWORD

The Alcohol, Tobacco and Firearms Bulletin is prepared in six parts as follows:

PART I—TREASURY DECISIONS
PART II—BUREAU RULINGS
PART III—BUREAU PROCEDURES

Respectively, these three parts contain regulations of the Department of the Treasury which relate to the laws administered by the Bureau of Alcohol, Tobacco and Firearms; rulings of the Bureau which interpret the requirements of such law and regulations; and procedures of the Bureau which establish methods for performing operations in compliance with the requirements of such law and regulations. Each of these parts is divided into four subparts covering matters relating to alcohol, tobacco, firearms and explosives.

PART IV—LEGISLATION. This part is divided into two subparts as follows: Subpart A, Currently Enacted Legislation and Subpart B, Committee Reports.

PART V—ADMINISTRATIVE MATTERS. This part is divided into three subparts as follows: Subpart A, Regulations pertaining to procedural and administrative practices of the Bureau; Subpart B, Statements of Organization and Function; Subpart C, Treasury Department Orders and Delegation Orders.

PART VI—ANNOUNCEMENTS. This part contains announcements of court decisions, notices of hearing and notices of proposed rulemaking published in the Federal Register, administrative actions taken by the Bureau, and items of general interest.

DEFINITIONS

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

DEFINITIONS

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code—26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code—27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS

The following abbreviations in current use and formerly used will appear in material published in the Bulletin:

A,B,C, etc.—The name of individuals
ATF—Bureau of Alcohol, Tobacco and Firearms
ATFB—Alcohol, Tobacco and Firearms Bulletin
ATF Proc.—ATF Procedure
ATF Rul.—ATF Ruling
C.B.—Cumulative Bulletin
Ct.D.—Court Decision
CFR—Code of Federal Regulations
D.O.—Delegation Order
E.O.—Executive Order
FAA Act—Federal Alcohol Administration Act
F.R.—Federal Register
M,N,X,Y,Z, etc.—The names of corporations, places and businesses, according to context
Pub. L.—Public Law
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling
Stat.—Statutes at Large
T.D.—Treasury Decision
T.D.O.—Treasury Department Order
U.S.C.—United States Code

x and y are used to represent certain numbers and when used with the word "dollars" represent sums of money.

Treasury Decisions PART I

Subpart A—Alcohol

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D.-96

27 CFR PART 9

Sonoma Valley Viticultural Area: Establishment

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Sonoma County, California, named "Sonoma Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of the Sonoma Valley viticultural area and the subsequent use of its name as an appellation of origin on wine labels and in wine advertisements will help consumers to identify the wines from this distinctive grape-growing area. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: January 4, 1982.

FOR FURTHER INFORMATION CONTACT:
John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202 566-7602).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines procedures for proposing an American viticultural area.

In response to a petition, ATF published a notice of proposed rulemaking in the **Federal Register** on December 15, 1980 (45 FR 82470), proposing the Sonoma Valley viticultural area in Sonoma County, California. ATF solicited written comment and held a public hearing on the proposal on January 13, 1981, in Santa Rosa, California.

ATF received several comments relating to Sonoma Valley among the numerous comments relating to the five viticultural areas proposed in Notice No. 360. All of the comments relating to Sonoma Valley were generally in favor of establishment of the Sonoma Valley viticultural area. Some commenters submitted additional historical evidence relating to the name.

Historical Evidence

The Sonoma Valley viticultural area has a long history of grape growing and wine making. In 1825, the first grapes were planted in Sonoma at the Mission San Francisco de Solano. In 1834, General Mariano Guadalupe Vallejo expanded these plantings. In the 1850's, the first major plantings of *Vitis vinifera* in the United States were established in the Sonoma Valley area. By 1900, there were approximately 4,000 acres of vines in the Sonoma Valley. The area has continued to be a center for grape production and wine making. Thus, ATF feels the viticultural area meets the requirement of 27 CFR 9.3(b)(1) that the name of the viticultural area is locally or nationally known as referring to the area specified in the viticultural area proposal.

Several persons testified at the public hearing that the proposed boundaries reasonably delineate the area historically known as "Sonoma Valley." Based on the record of the rulemaking proceedings, ATF feels that the boundaries described in 27 CFR 9.29 delineate the area historically known as Sonoma Valley, as required by 27 CFR 9.3(b)(2).

Geographical Features

Under 27 CFR 9.3(b)(3), a viticultural area must possess geographical features which distinguish the viticultural features of the area from surrounding areas. Based on the record, ATF believes that the Sonoma Valley viticultural area is distinguishable from the surrounding areas because of its climate.

The viticultural area, located in the southeastern corner of Sonoma County, receives less rainfall than other portions of Sonoma County north of the city of Santa Rosa. In addition, the Sonoma Mountains, ranging along the western border of the viticultural area, prevent the heavy fog often found in the area of Petaluma from intruding into most of the Sonoma Valley area. These same mountains along with the Mayacamas Range on the eastern boundary of the viticultural area geographically isolate the area from surrounding areas. This geographical isolation and the proximity of the San Pablo Bay on the southern end of the area combine to moderate the summer and winter temperature extremes in the valley.

Boundaries

Much of the hearing testimony was on the proposed boundaries with controversy arising over the boundaries in the northeastern and southeastern corners of the viticultural area. One vineyard owner felt that the northeastern corner of the Sonoma Valley viticultural area should be part of a future viticultural area which he planned to propose. He stated that he did not object, however, to the proposed Sonoma Valley boundaries as long as the approval of the boundary would not preclude a future viticultural area from partially overlapping that corner of the Sonoma Valley viticultural area. ATF does not object to a proposed viticultural area solely on the grounds that it may partially overlap another area. Each area must be judged individually on the criteria required in the regulations. Each area must meet the same requirements concerning the area's proposed name and the presence of distinguishing geographical characteristics. In addition, the establishment of viticultural areas is an evolutionary process. ATF will continue to consider any new information concerning viticultural areas. The boundary in the northeast corner of the Sonoma Valley viticultural area is drawn along the peaks of the mountains surrounding Sonoma Valley. ATF feels that this boundary delineates an area which meets the requirements for a viticultural area. This area includes the area traditionally known as Sonoma Valley and which posessses generally similar geographical features which distinguish it from the surrounding areas.

The boundary in the southeastern corner of the viticultural area was controversial because it conflicted with the previously proposed Napa Valley viticultural area by including a small portion in Napa County bounded by Los Amigos, Duhig, and Ramal Roads. ATF subsequently approved the Napa Valley viticultural area (including this disputed portion) using the Sonoma County-Napa County line as the boundary (46 FR 9061). This boundary is based on historical evidence presented at the Napa Valley hearing indicating that that part of Napa County has been traditionally known as part of "Napa Valley." ATF does not feel that there is sufficient evidence indicating that any portion of Napa County has been traditionally considered a part of "Sonoma Valley" or any portion of Sonoma County has been part of "Napa Valley." Each viticultural area has been traditionally identified with the county of the same name. ATF is establishing the county line as the common boundary between the two areas. Therefore, the area in Napa County bounded by Los Amigos, Duhig, and Ramal Roads and proposed as part of the Sonoma Valley viticultural area will remain in the Napa Valley area and not become part of the Sonoma Valley area.

At the public hearing a commenter suggested that the final regulations should allow property owners whose property is divided by the viticultural area boundary to choose whether their property, in its entirety, is in or out of the viticultural area.

ATF believes that although there may be some viticultural similarities between an area in Napa County and an area in the Sonoma Valley viticultural area, the area in Napa County does not meet the requirements of 27 CFR 9.3(b)(1) since the area has not been known as Sonoma Valley.

Also, property located outside the boundaries of a viticultural area may not be included in that viticultural area even if it is part of a larger parcel of property divided by the viticultural area boundary. ATF believes that to hold otherwise would make the regulations meaningless and possibly mislead consumers of wines labeled with a viticultural area appellation of origin.

Finally, evidence was presented at both the Napa Valley and Sonoma Valley hearings indicating that the United States Geological Survey (USGS) maps are inaccurate and are different from the actual county line as drawn by the tax assessors of both Napa County and Sonoma County. ATF is using the actual Napa County-Sonoma County line as the eastern boundary of the Sonoma Valley viticultural area regardless of where the USGS maps place it. ATF normally uses USGS maps because they are generally available throughout the United States. However, in this case, ATF is using the Sonoma County tax assessor's maps as the approved maps defining the Sonoma County-Napa County line.

Regulatory Flexibility Act

Section 4 of Pub. L. 96-354, the Regulatory Flexibility Act, specifically waives the requirements for an initial regulatory flexibility analysis and a final regulatory flexibility analysis for any rule for which the notice of proposed rulemaking was issued before January 1, 1981. The applicable notice of proposed rulemaking for this final rule was published in the **Federal Register** on December 15, 1980 at 45 FR 82470.

Effective Date

These regulations are effective January 4, 1982. However, since 27 CFR

4.25a, which allows the name of an approved American viticultural area to be used as an appellation of origin, is not mandatory before January 1, 1983, and the name "Sonoma Valley" is currently used as an appellation on wine labels, ATF has determined that Section 9.29 establishing specific boundaries for the Sonoma Valley viticultural area will not be mandatory before January 1, 1983.

Compliance with E.O. 12291

In compliance with Executive Order 12291 ATF has determined that this final rule is not a major rule since it will not result in—

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information

The principal author of this document is Thomas Minton of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This Treasury decision issued under the authority of 27 U.S.C. 205.

Regulations

On the basis of the foregoing, 27 CFR Part 9 is amended by the addition of § 9.29 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The table of sections in 27 CFR Part 9 is amended to include the title of § 9.29. As amended the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.29 Sonoma Valley (not mandatory before January 1, 1963).

* * * * *

2. Subpart C, 27 CFR Part 9, is amended by adding § 9.29. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural areas

* * * * *

§ 9.29 Sonoma Valley (not mandatory before January 1, 1983).

(a) *Name.* The name of the viticultural area described in this section is "Sonoma Valley."

(b) *Approved Maps.* The maps showing the boundaries of the Sonoma Valley viticultural area are the—

(1) "Cuttings Wharf, Calif." USGS 7.5 minute quadrangle;

(2) "Petaluma Point, Calif." USGS 7.5 minute quadrangle;

(3) "Sears Point, Calif." USGS 7.5 minute quadrangle;

(4) "Petaluma River, Calif." USGS 7.5 minute quadrangle;

(5) "Glen Ellen, Calif." USGS 7.5 minute quadrangle;

(6) "Cotati, Calif." USGS 7.5 minute quadrangle;

(7) "Santa Rosa, Calif." USGS 7.5 minute quadrangle;

(8) "Kenwood, Calif." USGS 7.5 minute quadrangle; and

(9) Appropriate Sonoma County tax assessor's maps showing the Sonoma County-Napa County line.

(c) *Boundaries.* The Sonoma Valley viticultural area is located within Sonoma County, California. From the beginning point at the junction of Tolay Creek and San Pablo Bay, the boundary runs—

(1) Northerly along Tolay Creek to Highway 37;

(2) Westerly along Highway 37 to its junction with Highway 121;

(3) Northwesterly in a straight line to the peak of Wildcat Mountain;

(4) Northwesterly in a straight line to Sonoma Mountain to the horizontal control station at elevation 2,271 feet;

(5) Northwesterly in a straight line to the peak of Taylor Mountain;

(6) Northeasterly in a straight line to the point at which Los Alamos Road joins Highway 12;

(7) Easterly in a straight line to the peak of Buzzard Peak;

(8) Easterly in a straight line to the peak of Mount Hood;

(9) Easterly in a straight line to an unnamed peak located on the Sonoma County-Napa County line and identified as having an elevation of 2,530 feet (This unnamed peak is located in the northeast quarter of Section 9, Township 7 North, Range 6 West, Mt. Diablo Base and Meridian);

(10) Southerly along the Sonoma County-Napa County line to the point at which Sonoma Creek enters San Pablo Bay; and

(11) Southwesterly along the shore of San Pablo Bay to the beginning point.

Signed: October 9, 1981.

G. R. DICKERSON,
Director.

Approved: November 18, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary
(Enforcement and Operations).

(Filed by the Office of the Federal Register on December 3, 1981, 8:45 a.m., and published in the Federal Register on December 4, 1981, 46 F.R. 59237)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-97

27 CFR PART 9

McDowell Valley Viticultural Area; Establishment

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Mendocino County, California, to be named "McDowell Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of McDowell Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will help consumers better identify the wines from this area and will help winemakers distinguish their products from wines originating in other areas.

EFFECTIVE DATE: January 4, 1982.

FOR FURTHER INFORMATION CONTACT:

E. J. Ference, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4 allowing the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic characteristics, the boundaries of which have been recognized and defined in 27 CFR Part 9. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

McDowell Valley Vineyards, Inc. and 10 other property owners within the boundaries of McDowell Valley, Mendocino County, California, petitioned ATF to establish a viticultural area to be named "McDowell Valley." McDowell Cellars is the only winery presently located in the proposed viticultural area. There are approximately 540 acres now producing grapes in the area.

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 368, in the **Federal Register** on April 9, 1981 (46 FR 21197), proposing the establishment of the McDowell Valley viticultural area.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, the Secretary of the Treasury certifies under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Historical and Current Evidence of the Name

The name of the area, McDowell Valley, was well documented in the petition. The name originated with an early settler, Paxton A. McDowell, who settled in the area in about 1852. Historical use of the name for the area dates from 1872. A 1916 publication, "Soil Survey of the Ukiah Area, California," prepared by the United States Department of Agriculture, refers to and describes McDowell Valley. The name is shown currently on the "Hopland Quadrangle California" 7.5 minute series USGS map. That map identifies the area which is the subject of this final rule. After evaluating the petition and the comments received, ATF believes that McDowell Valley viticultural area has a unique historical identity and that the name "McDowell Valley" is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

McDowell Valley is a natural, sheltered valley. The bench mark at the lower northwestern end of the valley is at 725 feet. The valley is surrounded by mountain ranges, including some which rise sharply to elevations of over 2,500 feet above sea level. McDowell Creek drains the valley and flows into the Russian River system. There is an upper elevation contour of 1,000 feet around the valley which effectively contains an area of "gravelly-loam" alluvial soils. The surrounding slopes are composed of nonalluvial upland soils, which are unsuitable for vineyards.

The valley has temperatures consistently warmer during the spring frost season and cooler during the summer growing season than most other Mendocino and Lake County areas surveyed by the National Weather Service between 1965 and 1978.

ATF has determined that due to the physical and climatological features of McDowell Valley, it is distinguishable from the surrounding area.

Boundaries

The boundaries proposed by the petitioner are adopted. The boundaries generally delineate the area drained by McDowell Creek up to the 1,000-foot contour line of the surrounding ridges.

Comments

Two comments were received during the comment period. One comment was from McDowell Valley Vineyards, and the other from a wine marketing agent for McDowell Valley Vineyards and other wine producers. Both comments were in full support of the petition. In addition, ATF received 3 comments which were attached to the petition and fully supported it. These comments were from the California Association of Winegrape Growers; Bruce E. Bearden, Farm Advisor, University of California, Cooperative Extension, Mendocino County Agricultural Center; and the Mendocino County Vintners Association Board of Directors. ATF has received no information from any source indicating opposition to the petition.

Miscellaneous

ATF does not wish to give the impression by approving the McDowell Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. The approval of the area allows wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of McDowell Valley wines.

Disclosure

A copy of the petition and the comments received is available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The principal author of this document is E. J. Ference, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau participated in the preparation of this document, both in substance and style.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended (27 U.S.C. 205)), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to include the title of § 9.36. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.36 McDowell Valley

* * * * *

Par. 2. Subpart C is amended by adding § 9.36. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

§ 9.36 McDowell Valley.

(a) *Name.* The name of the viticultural area described in this section is "McDowell Valley."

(b) *Approved maps.* The appropriate map for determining the boundaries of the McDowell Valley viticultural area is a USGS map. That map is titled: "Hopland Quadrangle California" 7.5 minute series.

(c) *Boundaries.* Beginning at the northwest corner of Section 22 T13N R11W; thence running southerly along the section line between Sections 22 and 21 approximately 1700 feet to the intersection of the section line and the ridge line (highest elevation line) between the McDowell Creek Valley and the Dooley Creek Valley; thence running southeasterly along the ridge line (highest elevation line) to the intersection of the ridge line and the 1000-foot contour line in Section 27; thence running southeasterly and on the McDowell Creek Valley side of the ridge along the 1000-foot contour line to the intersection of the 1000-foot contour line and the south section line of Section 27; thence running easterly along the section line between Sections 27 and 34 and between Sections 26 and 35 to the intersection of the section line and the centerline of Younce Road; thence running southeasterly and then northeasterly along Younce Road to the intersection of Younce Road and the section line between Sections 26 and 35; thence running due north from the section line, across Coleman Creek approximately 1250 feet, to the 100-foot contour; thence running westerly and then meandering generally to the north and east along the 1000-foot contour to the intersection of the 1000-foot contour line and the section line between Sections 26 and 25; thence continuing along the 1000-contour easterly and then northwesterly in Section 25 to the intersection of the 1000-foot contour line and the section line between Sections 26 and 25; thence running northerly along the 1000-foot contour to the intersection of the 1000-foot contour line and the section line between Sections 23 and 24; thence running northerly along the section line across State Highway 175 approximately 1000 feet to the intersection of the section line and the 1000-foot contour line; thence running generally to the northwest along the 1000-foot contour line through Sections 23 and 14 and into Section 15 to the intersection of the 1000-foot contour and the flowline of an unnamed creek near the northeast corner of Section 15; thence southwesterly and down stream along the flowline of said unnamed creek and across Section 15, to the stream's intersection with the section line between Sections 15 and 16; thence running southerly along the section line approximately 100 feet to the northwest corner of Section 22 and to the point of beginning.

Signed: October 28, 1981.

G. R. Dickerson,
Director.

Approved: November 3, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary
(Enforcement and Operations).

(Filed by the Office of the Federal Register on December 3, 1981; 8:45 a.m., and published in the Federal Register on December 4, 1981, 46 F.R. 59241)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-98

27 CFR PART 9

Establishment of Santa Cruz Mountains Viticultural Area, California

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in portions of San Mateo, Santa Clara, and Santa Cruz Counties, California, to be named "Santa Cruz Mountains." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of viticultural areas and their subsequent use as appellations of origin in wine labeling and advertising will allow wineries to better designate the specific grape-growing areas where their wines come from and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: January 4, 1982.

FOR FURTHER INFORMATION CONTACT:
Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37671, 54624) revising regulations in 27 CFR Part 4. These regulations allow for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic characteristics. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

The Santa Cruz Mountains Vintners submitted a petition to establish a viticultural area in portions of San Mateo, Santa Clara, and Santa Cruz Counties, California, to be named "Santa Cruz Mountains." In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 360, in the **Federal Register** on December 15, 1980 (45 FR 82275), proposing the establishment of the Santa Cruz Mountains as a viticultural area.

Public Hearing

A public hearing was held on this issue on January 19, 1981, in Santa Clara, California. Nine persons testified at the hearing. The evidence gathered at this hearing and the petition and comments received was sufficient for ATF to base its final decision concerning the Santa Cruz Mountains.

Historical and Current Evidence of the Name

Testimony at the hearing established that the name, "Santa Cruz

Mountains", was used to designate an area having a long history as a grape-growing region in California.

The area has been recorded as the "Santa Cruz Mountains" since 1838. As early as 1867, when the first government surveyor laid section lines in the area, the vineyards of the region were noted. Moreover, numerous books and articles dealing with wine refer to the "Santa Cruz Mountains" as a specific grape-growing area. Testimony was also received which indicated that although the proposed area encompassed parts of three counties, the "Santa Cruz Mountains" constitutes a well-defined area forming a distinct geographical and phytogeographical unit.

ATF believes this testimony establishes the historical and current use of the name, Santa Cruz Mountains, as a distinguishable region and is the most appropriate for the viticultural area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural area from surrounding grape-growing areas. The petitioner claimed the "Santa Cruz Mountains" possesses a soil type, climate, and protective setting which provides a singular viticultural identity.

The petitoner stated that the "Santa Cruz Mountains" is characterized by a climate which is greatly influenced in the western portion by the Pacific Ocean breezes and fog movements. and in the eastern portion by the moderating influences of the San Francisco Bay. These two influences tend to produce weather which is generally cool during the growing season. Temperatures in the slopes of the hillsides where most of the vineyards are located appear to vary from that at the lower elevations. This is caused by the marine influence coming off the Pacific Ocean which cools the mountains at night much more than the valley floor.

The area is characterized by a growing season in excess of 300 days. This is apparently due to cool air coming down the mountains forcing warmer air upward, thereby lengthening the season in which the necessary conditions for grape-growing are present. Moreover, while the climate, in terms of temperature can be characterized as mild, the "Santa Cruz Mountains" has an average rainfall much greater than the surrounding areas.

The soils in the proposed area were identified as Franciscan shale which is unique to this particular area south of San Francisco. The soil is basically residual material from the decomposition of bedrock and the soil types in the area differ depending on the type of underlying bedrock. Generally, these residual soils tend to be thin and stony, and somewhat excessively drained. They were characterized as impoverished, making it extremely difficult to grow grapes. This contrasts greatly with the soil of the surrounding area which is primarily alluvium and is more fertile.

Based on this evidence, ATF has determined that the Santa Cruz Mountains is viticulturally distinguishable from the surrounding areas. This is based upon the evidence presented regarding the rainfall, soil, and general climate. The Santa Cruz Mountains can be seen as a defined area exhibiting features and characteristics unique to its boundaries when compared to the surrounding area.

Boundaries

The boundaries of the "Santa Cruz Mountains" viticultural area are based, in general, on contour lines and manmade features. Evidence was presented at the hearing that the contour lines varied to different levels to include an area exhibiting the same general geophysical characteristics, e.g. climate, soil, and topographic features.

Portions of the boundaries of the viticultural area are marked by man-made features, e.g. Highways 280 and 84, and Canada Road on the east. Testimony revealed that these roads were chosen because they delimit the particular geographical and climatic features of the area.

ATF believes that viticultural area boundaries based solely on man-made features are inappropriate. However, where man-made features, such as highways, coincide with the distinguishing geographical features, or provide a demarcation line between grape-growing areas and areas unsuitable for grape-growing, it is appropriate to use such features in describing boundaries. ATF believes that in the case of of "Santa Cruz Mountains", the boundaries in the regulations delineate an area with distinguishing climatic and topographic features.

Testimony was given at the hearing by two persons whose property was not included within the proposed area. They were advised that they could submit petitions to amend the boundaries to include their property. Subsequently, one of these persons submitted a petition, along with the appropriate U.S.G.S. map (Cupertino Quadrangle). This petition had similar geographical features to that of the proposed area. Further, the excluded area's soil quality and climatic conditions exhibit the same characteristics of the proposed area. Therefore, ATF believes this property should be included within the Santa Cruz Mountains viticultural area.

ATF received a petition from the second individual who testified at the public hearing and who requested that the boundary be lowered from the 400-foot contour line to either the 250 or 300-foot contour line. This individual indicated that while he has no vineyards at present, he anticipated planting approximately 15 to 20 acres of grapes in the future. No supporting documents or the appropriate U.S.G.S. map was submitted with this letter. Therefore, ATF is taking no action on this petition at this time because of insufficient data.

A third person submitted a petition, along with the appropriate U.S.G.S. map (Mt. Madonna Quadrangle) to amend the boundaries of the viticultural area. Specifically, this petition maintains three vineyards would have been bisected by the proposed area. The petitioner indicated that the two vineyards in the excluded area, comprising a total of eight acres, had similar geographical features to that of the eleven acre vineyard which was included within the area. Based on this petition, ATF is amending the boundary to include all three vineyards within the viticultural area.

A fourth person submitted a petition, along with the appropriate U.S.G.S. map (Cupertino Quadrangle) to amend the boundaries. This petition maintains that a vineyard would be bisected by the proposed boundary. The petitioner claims the the excluded area exhibits the same climatic and soil characteristics of the vineyard area included within the area. Based on this evidence, ATF is amending the boundary to include the entire vineyard within the Santa Cruz Mountains viticultural area.

Other than the three additions previously discussed, ATF is approving the boundaries of the Santa Cruz Mountians viticultural area as proposed. This decision is based on the petitions, the testimony presented at the hearing, and comments received.

Miscellaneous

ATF does not wish to give the impression that by approving the Santa Cruz Mountains viticultural area it is approving the quality of the wine from that area or endorsing the wine. ATF is approving the area as being viticulturally distinct from surrounding areas, not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Santa Cruz Mountains.

Disclosure

Copies of the hearing proceeding are available for inspection during normal business hours at the following two locations: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, 12th & Pennsylvania Avenue, NW, Washington, D.C.; and, at the Office of the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, 34th Floor, 525 Market Street, San Francisco, California.

Compliance With Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a major rule since it will not result in—

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This final rule relates to a notice of proposed rulemaking published prior to January 1, 1981, and therefore, is not subject to the authority of the Regulatory Flexibility Act.

Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau also participated in preparation of this document, both in matters of substance and style.

Authority and Issuance

Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981 as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.31 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.31 Santa Cruz Mountains.

* * * * *

Paragraph 2. Subpart C is revised by adding § 9.31 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.31. Santa Cruz Mountains.

(a) *Name*. The name of the viticultural area described in this section is "Santa Cruz Mountains."

(b) *Approved Maps*. The 24 approved U.S.G.S. maps for determining the boundaries are 23 7.5 minute scale and one 5 × 11 minute scale.

(1) "Ano Nuevo Quadrangle, California";

(2) "Big Basin Quadrangle, California";

(3) "Castle Rock Ridge Quadrangle, California";

(4) "Cupertino Quadrangle, California";

(5) "Davenport Quadrangle, California – Santa Cruz County";

(6) "Felton Quadrangle, California – Santa Cruz County";

(7) Franklin Point Quadrangle, California";

(8) "Half Moon Bay Quadrangle, California – San Mateo County";

(9) "La Honda Quadrangle, California – San Mateo County";

(10) "Laurel Quadrangle, California";

(11) "Loma Prieta Quadrangle, California";

(12) "Los Gatos Quadrangle, California";

(13) "Mt. Madonna Quadrangle, California";

(14) "Mindego Hill Quadrangle, California";

(15) "Morgan Hill Quadrangle, California – Santa Clara County";

(16) "Palo Alto Quadrangle, California";

(17) "San Gregorio Quadrangle, California – San Mateo County";

(18) "San Mateo Quadrangle, California – San Mateo County";

(19) "Santa Teresa Hills Quadrangle – Santa Clara County";

(20) "Soquel Quadrangle, California – Santa Cruz County";

(21) "Watsonville East Quadrangle, California";

(22) "Watsonville West Quadrangle, California";

(23) "Woodside Quadrangle, California – San Mateo County"; and

(24) One 5 × 11 minute series map entitled: "Santa Cruz, California."

(c) *Boundaries.* The Santa Cruz Mountains viticultural area is located in portions of San Mateo, Santa Clara, and Santa Cruz Counties, California.

(1) From the beginning point where Highway 92 and the 400-foot contour line intersect (Half Moon Bay Quadrangle), the boundary line follows Highway 92, beginning in a southeasterly direction, to a point where Highway 92 and the 400-foot contour line intersect (San Mateo Quadrangle);

(2) Thence along the 400-foot contour line, beginning in a southeasterly direction, to a point where the 400-foot contour line and Canada Road intersect (Woodside Quadrangle);

(3) Thence along Canada Road, beginning in a southerly direction, to a point where Canada Road and Highway 280 intersect (Woodside Quadrangle);

(4) Thence along Highway 280, beginning in a southeasterly direction, to a point where Highway 280 and 84 intersect (Palo Alto Quadrangle);

(5) Thence along Highway 84, beginning in a southwesterly direction, to a point where Highway 84 and Mountain Home Road intersect (Woodside Quadrangle);

(6) Thence along Mountain Home Road, beginning in a southerly direction, to a point where Mountain Home Road and Portola Road intersect (Palo Alto Quadrangle);

(7) Thence along Portola Road, beginning in a westerly direction, to a point where Portola Road and Highway 84 intersect (Woodside Quadrangle);

(8) Thence along Highway 84, beginning in a southwesterly direction, to a point where Highway 84 and the 600-foot contour line intersect (Woodside Quadrangle);

(9) Thence along the 600-foot contour line, beginning in a northeasterly direction, to a point where the 600-foot contour line and Regnart Road intersect (Cupertino Quadrangle);

(10) Thence along Regnart Road, beginning in a northeasterly direction to a point where Regnart Road and the 400-foot contour line intersect (Cupertino Quadrangle);

(11) Thence along the 400-foot contour line, beginning in a southerly direction, to a point where the 400-foot contour line and the north section line of Section 35, T.6 S./R. 2 W., intersect (Cupertino Quadrangle);

(12) Thence along the north section line of Sections 35 and 36, in an easter-

ly direction, to a point where the section line and Highway 85 intersect (Cupertino Quadrangle);

(13) Thence along Highway 85, in a southerly direction, to a point where Highway 85 and the southern section line of Section 36 intersect (Cupertino Quadrangle);

(14) Thence along the section line, in a westerly direction, to a point where the section line and the 600-foot contour line intersect (Cupertino Quadrangle);

(15) Thence along the 600-foot contour line, beginning in a southerly direction, to a point where the 600-foot contour line and Pierce Road intersect (Cupertino Quadrangle);

(16) Thence along Pierce Road, in a southerly direction, to a point where Pierce Road and the 800-foot contour line intersect (Cupertino Quadrangle);

(17) Thence along the 800-foot line, beginning in a northwesterly direction, to a point where the 800-foot contour line and the east section line of Section 25, T. 10 S./R. 2 E., intersect (Mt. Madonna Quadrangle);

(18) Thence along the east section line, in a southerly direction, to a point where this section line and the 800-foot contour line intersect (Mt. Madonna Quadrangle);

(19) Thence along the 800-foot contour line, beginning in a southeasterly direction, to a point where the 800-foot contour line and Highway 152 intersect (Watsonville East Quadrangle);

(20) Thence along Highway 152, in a southwesterly direction, to a point where Highway 152 and the 400-foot contour line intersect (Watsonville East Quadrangle);

(21) Thence along the 400-foot contour line, beginning in a northwesterly direction, to a point where the 400-foot contour line and the Felton Empire Road intersect (Felton Quadrangle);

(22) Thence along Felton Empire Road, in an easterly direction, to a point where Felton Empire Road and Highway 9 intersection (Felton Quadrangle);

(23) Thence along Highway 9, in a southerly direction, to a point where Highway 9 and Bull Creek intersect (Felton Quadrangle);

(24) Thence along Bull Creek, beginning in a southwesterly direction, to a point where Bull Creek and the 400-foot contour line intersect (Felton Quadrangle); and

(25) Thence along the 400-foot contour line, beginning in a southeasterly direction, back to the point of beginning.

Signed: November 3, 1981.

G. R. DICKERSON,
Director.

Approved: November 18, 1981.

JOHN P. SIMPSON,
Assistant Secretary
(Enforcement and Operations).

(Filed by the Office of the Federal Register on December 3, 1981; 8:45 a.m. and published in the Federal Register on December 4, 1981, 46 F.R. 59239)

Bureau Rulings PART II

Subpart A—Alcohol

27 CFR 13.31: DETERMINATION OF PROOF

(Also 13.32, 19.277, 19.393 and 19.397)

The method approved by the Association of Official Analytical Chemists (AOAC) for use of the Mettler-Paar DMA-55 density meter is equal in accuracy to the distillation method for determining the proof of high-solids distilled spirits products.

ATF Rul. 82-3

The Bureau of Alcohol, Tobacco and Firearms has been requested to state its position regarding the use of the Mettler-Paar DMA-55 density meter for determining the proof of high-solids distilled spirits products.

Regulations in 27 CFR 13.31 require that the proof of spirits be determined by the use of a hydrometer and thermometer in accordance with the provisions of 27 CFR 13.23 with the exception that where spirits contain solids in excess of 600 milligrams per 100 milliliters at gauge proof, true proof may be determined on the basis of a recognized laboratory method which is equal or superior in accuracy to the distillation method.

Based on the favorable results of two collaborative studies in which ATF chemists and alcoholic beverage industry chemists participated, the Association of Official Analytical Chemists (AOAC) approved the proposed procedure for the use of the Mettler-Paar DMA-55 density meter recognition as in AOAC laboratory method.

Held, pursuant to the provisions of section 13.31(b)(2), the Director recognizes the AOAC approved method for the use of the Mettler-Paar DMA-55 density meter as a laboratory method which is equal to the distillation method for determining the proof of high-solids distilled spirits products provided that a sample of the high-solids product must be distilled in a small laboratory still and returned to its original volume and temperature prior to the use of this instrument.

27 CFR 13.32: DETERMINATION OF PROOF OBSCURATION

The AOAC approved method for the Mettler-Paar DMA-55 density meter may be used to determine the proof of high-solids distilled spirits products. See ATF Ruling 82-3, above.

27 CFR 19.277: MEASURING DEVICES AND PROOFING INSTRUMENTS

The AOAC approved method for the Mettler-Paar DMA-55 density meter may be used to determine the proof of high-solids distilled spirits products. See ATF Ruling 82-3, above.

27 CFR 19.393: BOTTLING TANK GAUGE

The AOAC approved method for the Mettler-Paar DMA-55 density meter may be used to determine the proof of high-solids distilled spirits products. See ATF Ruling 82-3, above.

27 CFR 19.397: FILLING OF BOTTLES

The AOAC approved method for the Mettler-Paar DMA-55 density meter may be used to determine the proof of high-solids distilled spirits products. See ATF Ruling 82-3, above.

27 CFR 240.524: FINISHING OF WINE

Limitation on substances foreign to wine. See ATF Rul. 82-1, below.

27 CFR 240.1052: NOTICE

(Also 240.524)

Materials (in addition to those listed in 27 CFR 240.1051) authorized for treatment of wine. ATF Ruling 79-12 supplemented; ATF Rulings 80-2 and 81-5 superseded.

ATF Rul. 82-1

The use of the following materials, in addition to those specifically authorized by 27 CFR 240.1051 and ATF Ruling 79-12, has been found by the Director, Bureau of Alcohol, Tobacco and Firearms, to be consistent with good commercial practice. Accordingly, such materials have been approved for use by proprietors of bonded wine cellars in the production, cellar treatment, or finishing of wine, within the general limitations of 27 CFR 240.524, and with those specifically shown in the following table.

A winemaker desiring to use one or more of the materials listed may obtain approval for such use from the regional regulatory administrator of the region in which the bonded wine cellar is located by filing notice pursuant to the provisions of 27 CFR 240.1052.

ATF Rul. 79-12, 1979 ATF Q.B. 2, is supplemented; ATF Rul. 80-2, 1980 ATF Q.B. 1, and ATF Rul. 81-5, 1981 ATF Q.B. 3, are superseded.

MATERIALS	USE	REFERENCE OR LIMITATIONS
Amylase enzyme	To clarify distilling material	The amylase enzyme shall be derived from a nonpathogenic and nontoxic strain of *Aspergillus oryzae*. The amount used shall not exceed 400 parts per million. (Unpublished GRAS per USFDA advisory opinion dated 2/9/60).
Bentonite slurry	To clarify juice and/or wine	Not more than 17 mls. of water shall be added to each gram of Bentonite used. Use of this material and any other treating material prepared in a water-based solution must not exceed 1% by volume of the total of juice and/or wine so treated. 21 CFR 182.1155 (GRAS).
Benzoic acid and salts of benzoic acid	To preserve wine......	Use, separately or in combination with one another or with other approved preserving agents, must not exceed 0.1% by weight (w/w). 21 CFR 184.1021 & 184.1733 (GRAS).
Casein and salts (calcium and potassium) of casein (with or without foodgrade cellulose and/or diatomaceous earth), and milk powder.	To clarify wine	GRAS per USFDA advisory opinion letters dated Aug. 25, 1961, and Feb. 23, 1960. The amount of milk powder used shall not exceed 0.036 gram per 100 mls. of wine. 27 CFR 240.528.
Casein slurry	To clarify juice and/or wine	Not more than 17 mls. of water shall be added to each gram of casein. Use of this material and any other treating material prepared in a water-based solution must not exceed 1% by volume of the total of juice and/or wine so treated (GRAS).

Gelatin slurry	To clarify juice and/or wine	Not more than 17 mls. of water shall be added to each gram of gelatin. Use of this material and any other treating material prepared in a water-based solution must not exceed 1% by volume of the total of juice and/or wine so treated. 21 CFR 184.1318 (GRAS).
Hydrogen peroxide	To remove color from the juice of red and black grapes..............	The amount used shall not exceed 500 parts per million. The use of hydrogen peroxide is limited to oxidizing color pigment in the juice of red and black grapes. Wine produced by fermentation of such juice is limited solely to blending with white wines and red wines derived from juice not subjected to such treatment. 27 CFR 182.1366 (GRAS).
Parabens: n-alkyl esters of 4-hydroxybenzoic acid: n-heptyl-, propyl, and methylparaben	To preserve wine.......	Use, separately or in combination with one another or with other approved preserving agents, must not exceed 0.1% by weight (w/w). Use of n-heptyl-paraben must not exceed 12 parts per million. 21 CFR 172.145, 184.1490, and 184.1670 (GRAS).
Silica gel (colloidal silicon dioxide – 30%)	To clarify juice and/or wine	The amount used shall not exceed 0.24 gram per 100 mls. of juice and/or wine. Silicon dioxide shall be completely removed by filtration. 21 CFR 172.480 and 173.340(a)(2) (GRAS).
Sodium citrate	To control pH and smoothen grape wine................	The amount used shall not exceed 0.1 gram per 100 milliliters. 27 CFR 182.1751 and 182.6751 (GRAS).

GRAS is a U.S. Food and Drug Administration acronym meaning "generally recognized as safe."

Subpart C—FIREARMS

27 C.F.R. 179.11: Meaning of Terms

The KG-9 pistol is a machinegun as defined in the National Firearms Act.

ATF Rul. 82-2

The Bureau of Alcohol, Tobacco and Firearms has examined a firearm identified as the KG-9 pistol. The KG-9 is a 9 millimeter caliber, semiautomatic firearm which is blowback operated and which fires from the open bolt position with the bolt incorporating a fixed firing pin. In addition, a component part of the weapon is a disconnector which prevents more than one shot being fired with a single function of the trigger.

The disconnector is designed in the KG-9 pistol in such a way that a simple modification to it, such as cutting, filing, or grinding, allows the pistol to operate automatically. Thus, this simple modification to the disconnector together with the configuration of the above design features (blowback operation, firing from the open bolt position, and fixed firing pin) in the KG-9 permits the firearm to shoot automatically, more than one shot, without manual reloading, by a single function of the trigger. The above combination of design features as employed in the KG-9 is normally not found in the typical sporting firearm.

The National Firearms Act, 26 U.S.C. § 5845(b), defines a machinegun to include any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

The "shoots automatically" definition covers weapons that will function automatically. The "readily restorable" definition defines weapons which previously could shoot automatically but will not in their present condition. The "designed" definition includes those weapons which have not previously functioned as machineguns but possess design features which facilitate full automatic fire by simple modification or elimination of existing component parts.

Held: The KG-9 pistol is designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. Consequently, the KG-9 pistol is a machinegun as defined in section 5845(b) of the Act.

With respect to the machinegun classification of the KG-9 pistol under the National Firearms Act, pursuant to 26 U.S.C. § 7805(b), this ruling will not be applied to KG-9 pistols manufactured before January 19, 1982. Accordingly, KG-9 pistols manufactured on or after January 19, 1982, will be subject to all the provisions of the National Firearms Act and 27 C.F.R. Part 179.

Announcements PART VI

Announcement 82-1

Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected, as identified by the Administrator, Federal Emergency Management Agency (FEMA), are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

Date Disaster Areas Identified by FEMA	*Affected Areas*	*Type of Disaster*
December 3, 1981	MASSACHUSETTS: Four block area in the City of Lynn	Fire beginning on or about November 28, 1981
January 7, 1982	CALIFORNIA: Counties of: Alameda, Contra Costa, Marin, San Mateo, Santa Cruz, Solano, and Sonoma	Mud slides and high tides beginning on or about December 19, 1981
March 20, 1982	INDIANA: County of: Allen, LaPorte, Marshal and Dekalb	Severe storms and flooding beginning on or about March 12, 1982
March 26, 1982	OHIO: Counties of: Defiance, Henry, Wood, Paulding, Lucas, Fulton, Williams and Village of Scott (Van Wert County)	Severe storms and flooding beginning on or about March 12, 1982
March 29, 1982	MICHIGAN: Counties of: Berrien and Monroe	Severe storms and flooding beginning on or about March 12, 1982

Announcement 82-2

Statistical tabulation of firearms manufactured in the United States and firearms exported during Fiscal Year 1981

The following statistics represent the number of firearms manufactured in the United States during the period 1 October 1980 through 30 September 1981, and the number of those firearms which were subsequently exported. These figures were compiled from Forms 4483-A submitted by federally licensed manufacturers of firearms.

The figures do not include firearms that were manufactured for use by the Armed Forces of the United States. Also, only those weapons that are "firearms" as that term is defined in Titles I and II of Public Law 90-618, the Gun Control Act of 1968, are included in the tabulation.

Type of Firearm Produced

	Oct.80-Dec. 80	Jan. 81-Mar. 81	Apr. 81-Jun. 81	Jul. 81-Sep. 81	Oct. 80-Sep. 81
Pistols	189,864	204,918	238,484	201,903	835,169
Revolvers	374,011	433,899	473,672	420,480	1,702,062
Rifles	410,210	440,435	417,791	412,509	1,680,945
Shotguns & comb. guns	289,529	303,891	306,177	256,018	1,155,615
Machineguns	12,349	21,492	13,221	16,816	63,878
Any other weapon	8	0	59	26	93

Type of Firearm Exported

	Oct. 80-Dec. 80	Jan. 81-Mar. 81	Apr. 81-Jun. 81	Jul. 81-Sep. 81	Oct. 80-Sep. 81
Pistols	6,207	5,642	6,995	6,824	25,668
Revolvers	50,508	68,666	54,091	53,541	226,806
Rifles	62,245	37,878	39,468	19,863	159,454
Shotguns & comb. guns	80,581	26,788	35,073	33,833	176,275
Machineguns	109	173	39	1,349	1,670
Any other weapon	0	0	0	10	10

Announcement 82-3

Recall of Alcoholic Product

A quantity of distilled spirits bottled by Tri-L Distributors Inc., Tustin, California, was withdrawn from the market after they were found to be deficient in proof. The eight products recalled were: Gold Seal, All American, Karasov, Volska, Hughes, Ralphs, Lucky and Velvet Touch, all of which were distributed in Southern California, Arizona and Texas. Of the 2,399 cases bottled, 1,269 cases were withdrawn from the market.

Announcement 82-4

Recall of Alcohol Beverages

Recently 1,079 cases of a variety of blended whiskies shipped by Tri-L Distributors Inc., Tustin, California, were ordered to be recalled from the market. The products were found to be deficient in that they contained 16.9 percent straight whisky on a proof gallon basis and the labels stated 20 percent. The total amount returned from the primary distribution area of Southern California, Arizona, and Texas was 317 cases. The brands involved in the shipments were: Royal Occasion, Liquor Mart, Dawson Springs, Tops Supreme, Lucky, Samuel Clemens, Royal Oak, Hughes El Rancho, Ralphs Plain Wrap, Nelson Springs, and Slim Price.

Announcement 82-5

Recall of Alcohol Beverages

Seven cordials produced by Tri-L Distributors Inc., DSP-CA-131, Cerritos, California, were recently withdrawn from the market for having a wide variation in proof. Samples of the cordials revealed proofs ranging from a low of 37° to a high of 79.4° for goods labeled at 42° of proof. 753 cases were recalled or dumped and rebottled. The products involved were: Peppermint Schnapps, Blackberry and Brandy, Amaretto, Creme de Cocoa, Coffee Liqueur, Creme de Menthe, and Triple Sec.

Announcement 82-6

Revocation of Permit

ATF has revoked the alcohol fuel producer's permit of Elbert Tidwell, Hilham, Tennessee for violation of 26 U.S.C. 5181(e) and 5601(a)(15). Tidwell withdrew distilled spirits from the plant premises without rendering the spirits unfit for beverage use and for selling and distributing distilled spirits produced pursuant to his alcohol fuels permit for other than fuel use.

Announcement 82-7

Revocation of Permit

The SDA permit held by Certified Laboratories, Inc., Warrington, Pennsylvania, has been revoked by ATF in accordance with 26 U.S.C. 5271(e)(8). The permittee failed to engage in the operations authorized by its permit for a period of more than two years.

Announcement 82-8

Offer in Compromise

ATF has accepted an offer in compromise of $1,000 from Monarch Wine Company of Georgia, Atlanta, Georgia. An inspection disclosed that Monarch violated 26 U.S.C. 5008, 5357, 5367, 5369, 5386 and 27 U.S.C. 205(e) for improper recordkeeping, labeling, formula, inventory and storage requirements.

Announcement 82-9

Offer in Compromise

Ships Supply, Inc., Jacksonville, Florida, has submitted an offer in compromise of $2,000 for violations of 26 U.S.C. 5704, 5713, 5722, and 5741. The proponent failed to (1) properly maintain accurate records and (2) properly return tobacco products to bonded premises.

Announcement 82-10

Offer in Compromise

Continental Distilling Corp., Linfield, Pennsylvania, was found in violation of 26 U.S.C. 5201, 5203 and 5207 for failure to keep and maintain sufficient records of (1) losses in bond and (2) various storage operations. In compromise of the civil and criminal liabilities incurred, ATF accepted an offer in compromise of $7,500.

Announcement 82-11

Offer in Compromise

The Viking Distillery, Inc., Albany, Georgia, was found in violation of 26 U.S.C. 5061. ATF accepted an offer in compromise of $2,420.78 for penalties resulting from Viking's failure to timely file and timely pay taxes due for a 15-day tax period.

Announcement 82-12

Offer in Compromise

ATF has accepted an offer in compromise of $350 from Door Lounge, Inc., St. Louis, Missouri. The proponent was found in violation of 26 U.S.C. 5301(c)(1) through 5301(c)(4) by having in its possession seven liquor bottles of which the contents had been altered and/or refilled.

Announcement 82-13

Offer in Compromise

ATF has accepted an offer in compromise of $20,000 from Hiram Walker Distributing Co., Des Plaines, Illinois. The proponent was found in violation of 27 U.S.C. 205(b) and 205(c)(2) for giving indirect inducements to retail liquor dealers and giving payments to a representative of trade buyers (retail liquor dealers). These violations resulted in the exclusion of products sold by competitors in interstate commerce.

Announcement 82-14

Offer in Compromise

ATF has accepted two offers in compromise from The Distillers Company, Ltd., Plainfield, Illinois. The first offer of $23,769.21 was accepted in compromise of liabilities rising from violations of 26 U.S.C. 5207(a)(4)(C) in 1980 and 26 U.S.C. 5207(b)(3) from 1975 through 1979 by failing to maintain accounting records which resulted in failure to pay all taxes when due. The second offer of $6,265.14 was accepted in compromise of liabilities from violation of 26 U.S.C. 6651 for failing to timely file and timely pay its distilled spirits taxes for the period of February 16 through February 28, 1981.

982-2

ALCOHOL, TOBACCO AND FIREARMS

No. 1982–2
Apr.–Jun.

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quarterly bulletin

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms

T 70.7:

this issue contains

ALCOHOL MATTERS

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NOTICE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Trade and Consumer Affairs Division, Washington, D.C. 20226.

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INTRODUCTION

The Alcohol, Tobacco and Firearms Bulletin is the authoritative instrument of the Director, Bureau of Alcohol, Tobacco and Firearms, for announcing official rulings and procedures of the Bureau and for publishing Treasury Decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record.

It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). All rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, industry regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published.

Bureau Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

FOREWORD

The Alcohol, Tobacco and Firearms Bulletin is prepared in six parts as follows:

PART I—TREASURY DECISIONS
PART II—BUREAU RULINGS
PART III—BUREAU PROCEDURES

Respectively, these three parts contain regulations of the Department of the Treasury which relate to the laws administered by the Bureau of Alcohol, Tobacco and Firearms; rulings of the Bureau which interpret the requirements of such law and regulations; and procedures of the Bureau which establish methods for performing operations in compliance with the requirements of such law and regulations. Each of these parts is divided into four subparts covering matters relating to alcohol, tobacco, firearms and explosives.

PART IV—LEGISLATION. This part is divided into two subparts as follows: Subpart A, Currently Enacted Legislation and Subpart B, Committee Reports.

PART V—ADMINISTRATIVE MATTERS. This part is divided into three subparts as follows: Subpart A, Regulations pertaining to procedural and administrative practices of the Bureau; Subpart B, Statements of Organization and Function; Subpart C, Treasury Department Orders and Delegation Orders.

PART VI—ANNOUNCEMENTS. This part contains announcements of court decisions, notices of hearing and notices of proposed rulemaking published in the Federal Register, administrative actions taken by the Bureau, and items of general interest.

DEFINITIONS

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

DEFINITIONS

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code—26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code—27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS

The following abbreviations in current use and formerly used will appear in material published in the Bulletin:

A,B,C, etc.—The name of individuals
ATF—Bureau of Alcohol, Tobacco and Firearms
ATFB—Alcohol, Tobacco and Firearms Bulletin
ATF Proc.—ATF Procedure
ATF Rul.—ATF Ruling
C.B.—Cumulative Bulletin
Ct.D.—Court Decision
CFR—Code of Federal Regulations
D.O.—Delegation Order
E.O.—Executive Order
FAA Act—Federal Alcohol Administration Act
F.R.—Federal Register
M,N,X,Y,Z, etc.—The names of corporations, places and businesses, according to context
Pub. L.—Public Law
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling
Stat.—Statutes at Large
T.D.—Treasury Decision
T.D.O.—Treasury Department Order
U.S.C.—United States Code

x and y are used to represent certain numbers and when used with the word "dollars" represent sums of money.

Treasury Decisions PART I

Subpart A—ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-99

27 CFR Part 9

Leelanau Peninsula Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Leelanau County, Michigan, to be named "Leelanau Peninsula." This final rule is the result of a petition submitted by Mr. Lawrence Mawby, proprietor of the L. Mawby Vineyards/Winery in Suttons Bay, Michigan. The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Leelanau Peninsula as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: April 29, 1982.

FOR FURTHER INFORMATION CONTACT:
Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226. (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37671, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR for the listing of approved viticultural areas.

Section 9.11, Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

ATF was petitioned to establish a viticultural area to be named "Leelanau Peninsula." In response to this petition, ATF published a Notice of Proposed Rulemaking, No. 380, in the Federal Register on August 5, 1981 (46 FR 39852), proposing the establishment of the "Leelanau Peninsula" viticultural area.

Comments

Seven comments were submitted in response to the notice. The comments were submitted by: the Leelanau County Board of Commissioners, as Resolution Number 21-81; a customer of one of the local wineries within the proposed area; a local winery; a horticulturist from Michigan State University; Mr. Leon Adams, author of *The Wines of America;* The Association of American Vintners and one of the first commercial grape growers in the proposed area. All of these commenters supported the petition for the viticultural area, as proposed.

Historical and Current Evidence of the Name

The name of the area, Leelanau Peninsula, was well documented in the petition as an area which has been associated with fruit-growing for over 100 years. More recently, the area has been identified as a distinctive grape-growing region which contains four wineries.

These wineries have approximately 120 acres of bearing French hybrid and Vinifera grapes. An additional 25-30 acres of these varieties have been planted.

The petitioner furnished information which documented the name Leelanau (initially spelled Leelinau) as first appearing in written records of the State of Michigan in 1840 as a result of a treaty with the Indians. In the 1836 Treaty of Washington, the upper western half of the State's lower peninsula was ceded by the Indians to the State of Michigan. The Leelanau area was officially designated as a county in 1862.

After evaluating the information contained in the petition and the written comments, ATF believes the historical and current evidence supports the name of the viticultural area as being a distinct grape-growing region.

Geophysical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish it from surrounding areas.

The Leelanau Peninsula was formed by glacial action and is distinguishable on three sides by natural features; Lake Michigan on the west and north, and the West Arm of Grand Traverse Bay on the east.

One comment stated that; "The moderating effect of Lake Michigan delays fruit development in the spring generally beyond the most serious frost period and then prevents sudden drops in temperature in the fall. This area of Michigan also receives considerable winter snowfall which generally prevents the soil from freezing, thus preventing fruit tree and vine crop root injury." The petitioned area contains microclimates which support varieties of French hybrid and Vinifera winegrapes.

The soils in the proposed area vary widely, as is always the case when land is formed by glacial action and deposits. The soil levels consist of granite and limestone bedrock, clay subsoils, with sand and gravel loam surface soils. This area is characterized by large deep inland lakes which add an additional moderating effect to the climate, highrolling and heavily-timbered hills in the north, and undulating plateaus in the south which rise 250 to 400 feet above Lake Michigan.

The Leelanau Peninsula and the Old Mission Peninsula to the east, comprise one of Michigan's two wine grape regions. The other region is located approximately 200 miles south along the Lake Michigan shore. These two regions are distinguishable by an average 20 day difference in the number of frostfree growing days which relates to an approximate difference of 400-500 cumulative growing-degree days (2300 degree days in the Leelanau area and 2800 degree days in the southern area).

Based on the information contained in the petition and comments received pertaining to the geographical, climatic and soil features, ATF has determined that the proposed area is distinguishable from the surrounding area.

Boundaries

The boundaries, as proposed, were established by the use of natural features on three sides; Lake Michigan on the west and north, and the West Arm of Grand Traverse Bay on the east. The Leelanau-Grand Traverse County line was the southern boundary.

Based on the evidence submitted with the petition, ATF has determined that the proposed boundaries sufficiently delineate the viticultural area from surrounding areas and, therefore, the boundaries are being adopted as proposed. This viticultural area encompasses 330 square miles. Furthermore, while ATF believes that viticultural boundaries based on political boundaries or man-made features are inappropriate, where political boundaries, such as the southern boundary line (Leelanau-Grand Traverse County line), closely approximate natural features, or where they provide a demarcation line from grape-growing areas as opposed to areas unsuitable for grape-growing, it is acceptable to use political boundaries or man-made features in describing the boundaries.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it will not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 604) for a final regulatory flexibility analysis shall not apply to this final rule.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Leelanau Peninsula wines.

Drafting Information

The principal author of this document is Norman P. Blake, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.40. As amended, the table of sections reads as follows:

* * * * *

Sec.
9.40 Leelanau Peninsula.

Par. 2. Subpart C is amended by adding § 9.40 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.40 Leelanau Peninsula.

(a) *Name.* The name of the viticultural area described in this section is "Leelanau Peninsula."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Leelanau Peninsula viticultural area are four U.S.G.S. maps. They are entitled:

(1) "Empire Quadrangle, Michigan," 15 minute series;

(2) "Maple City Quadrangle, Michigan," 15 minute series;

(3) "Traverse City Quadrangle, Michigan," 15 minute series; and

(4) "Northport Quadrangle, Michigan," 15 minute series.

(c) Boundaries. The Leelanau Peninsula viticultural area encompasses all of Leelanau County, Michigan, excluding the offshore islands.

Signed: February 17, 1982.

G. R. DICKERSON,
Director.

Approved: March 15, 1982.

JOHN M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on March 29, 1982, 8:45 a.m., and published in the Federal Register on March 30, 1982, 47 F.R. 13328)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-101

27 CFR Part 9

Edna Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule. Treasury decision.

SUMMARY: This final rule establishes a viticultural area in San Luis Obispo County, California, to be named "Edna Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Edna Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT:

Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4 allowing the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic characteristics. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Edna Valley Vineyard, Paragon Vineyard Co., Inc., Chamisal Vineyard, Lawrence Winery, and MacGregor Vineyards petitioned ATF to establish a viticultural area in San Luis Obispo County, California, to be named "Edna Valley."

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 369, in the Federal Register on April 9, 1981 (46 FR 21195), proposing the establishment of the Edna Valley viticultural area.

Comments

Ten comments were received during the comment period. Six of the comments were from wineries and vineyards located in Edna Valley. The remaining four comments were from a wine consumer, a farm advisor at the University of California, a consulting enologist in the state of California, and a Chairman of the Board of a vineyard located outside of Edna Valley. All ten comments were in full support of the petition. ATF has received no information from any source indicating opposition to the petition.

Evidence of the Name

The name of the area, Edna Valley, was well documented in the petition. The valley derives its name from the small community of Edna founded about 1883. The name "Edna" was first used in a recorded lease document in 1899. Over the ensuing years the valley became locally known as Edna Valley. After evaluating the petition and the comments received, ATF believes that the Edna Valley viticultural area has a unique historical identity and that the name "Edna Valley" is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

The petition and attached documents show that Edna Valley is a natural, elongated valley consisting of approximately 35 square miles. It is oriented along a northwest-southeast axis and is well defined by the Santa Lucia Mountains on the northeast side; by a low, hilly complex on the southeast; and by the San Luis Range on the southwest. The upper end or northwest border merges into the Los Osos Valley just beyond the city of San Luis Obispo. The inland areas of San Luis Obispo County generally experience substantially higher summer temperatures and substantially low winter temperatures than Edna Valley. This is because of the mountain barrier which runs along the San Luis Obispo County coastline, shielding the inland areas from the moderating ocean influences. In Edna Valley, killing frosts are rare which is not the case in other inland areas of the county that are denied the benefits of the ocean influence by the mountain barrier.

There is a gap in this mountain barrier where the Los Osos Valley meets the ocean in the Morro Bay area, 15 miles to the northwest of Edna Valley. Los Osos Valley serves as a wide mouthed funnel, providing an unobstructed sweep from the ocean into Edna Valley, bringing frequent morning fog during the summer months and winds in the afternoon. The pocket of hills and mountains surrounding Edna Valley captures the marine air, tempered by distance from the coastline, flowing in from Morro Bay through the Los Osos Valley, creating climatic conditions which differentiate Edna Valley from the surrounding areas. Although Los Osos Valley to the northwest is also a distinquishable valley, its proximity to the ocean causes its climate to be colder with more fog and wind than Edna Valley.

The floor of Edna Valley is approximately 120 to 300 feet above sea level. The viticultural area projects into the surrounding uplands to the 600-foot contour line of the Santa Lucia Mountains and to the 400-foot contour line of the San Luis Range on the west. The elevations of the surrounding mountainous areas generally range between 1000 to 2400 feet to the northwest, 600 to 1600 feet to the southeast, and 400 to 900 feet to the south and west. Major soils within the Edna Valley viticultural area are generally sandy clay loam, clay loam or clay. They are mostly hard, firm, sticky and plastic. They are also generally neutral to moderately alkaline. Most soils are calcareous at some level of the surface soil or subsoil. Soils in the surrounding mountainous areas above the 400 to 600-foot contour levels are shallower than in the valley and are of poor soil capability. Soils in Los Osos Valley are similar to those in Edna Valley but are generally heavier and of better capability.

After evaluating the petition and comments, ATF has determined that due to the topographic and climatic features of Edna Valley, it is distinguishable from the surrounding areas.

Boundaries

The boundaries proposed by the petitioner are adopted. The boundaries for the viticultural area are essentially the same as those for Edna Valley except that the viticultural area boundaries omit the hilly and mountainous areas (above the 400-foot contour line on the southwest side of the valley and above the 600-foot contour line on the northeast side) where slopes are too steep and soil capabilities are not suitable for grape-growing.

Miscellaneous

ATF does not wish to give the impression by approving the Edna Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantages gained can only come from consumer acceptance of Edna Valley wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and the comments received is available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure; 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Part 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to include the title of § 9.35. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.35 Edna Valley.

* * * * *

Part 2. Subpart C is amended by adding § 9.35. As amended, Subpart C reads as follows:

Subpart C-Approved American Viticultural Areas

* * * *

§ 9.35 Edna Valley.

(a) *Name.* The name of the viticultural area described in this section is "Edna Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Edna Valley viticultural area for four U.S.G.S. maps. They are titled:

(1) "San Luis Obispo Quadrangle, California—San Luis Obispo Co.," 7.5 minute series;

(2) "Lopez Mtn, Quadrangle, California—San Luis Obispo Co.," 7.5 minute series;

(3) "Pismo Beach Quadrangle, California—San Luis Obispo Co.," 7.5 minute series; and

(4) "Arroyo Grande NE Quadrangle, California—San Luis Obispo Co.," 7.5 minute series.

(c) *Boundaries.* The Edna Valley viticultural area is located in San Luis Obispo County, California. The beginning point is Cuesta Canyon County Park, located on U.S.G.S. map "San Luis Obispo Quadrangle" at the north end of Section 25, Township 30 South, Range 12 East.

(1) From the beginning point, the boundary runs southwesterly along San Luis Obispo Creek to a point .7 mile southerly of the confluence with Davenport Creek;

(2) Thence due east to the intersection with the 400-foot contour line of the northeastern flank of the San Luis Range;

(3) Thence in a generally easterly and then a southeasterly direction along this 400-foot contour line of the northeastern flank of the San Luis Range, which forms the southwestern rim of Edna Valley, to the township line identified as "T31S/T32S" on the U.S.G.S. map;

(4) Thence east along township line "T31S/T32S", across Price Canyon to Tiber;

(5) Thence in a generally easterly direction along the 400-foot contour line of Tiber Canyon and the southern rim of Canada Verde, crossing Corbit Canyon Road and continuing along the 400-foot contour line to longitude line 120°32'30";

(6) Thence north along longitude line 120°32'30" to the 600-foot contour line of the southwestern flank of the Santa Lucia Mountain Range;

(7) Thence in a generally northwesterly direction along the 600-foot contour line of the southwestern flank of the Santa Lucia Range to Cuesta Canyon County Park, the beginning point.

Signed: March 25, 1982.

G. R. DICKERSON,
Director.

Approved: April 12, 1982.

JOHN M. WALKER, JR.,
Assistant Secretary, Enforcement and Operations.

(Filed by the Office of the Federal Register on May 11, 1982, 8:45 a.m., and published in the Federal Register for May 12, 1982, 47 F.R. 20298)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-102

27 CFT Part 9

Lancaster Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This rule establishes a viticultural area in Lancaster and Chester Counties, Pennsylvania, to be named "Lancaster Valley." This final rule is the result of a petition submitted by Mr. R. Martin Keen, proprietor of Conestoga Vineyards in Lancaster, Pennsylvania. The Bureau of Alcohol, Tobacco and Firearms believes the establishment of Lancaster Valley as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT:
Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Under § 4.25a(e)(2), any interested person may petition ATF to establish a grape growing region as an American viticultural area.

ATF was petitioned to establish a viticultural area in eastern Pennsylvania to be named "Lancaster Valley." In response to this petition, ATF published a Notice of Proposed Rulemaking No. 381, in the Federal Register on August 28, 1981, (46 FR 43468), proposing the establishment of the "Lancaster Valley" viticultural area.

Comments

Only one comment was received in response to the notice of proposed rulemaking. The petitioner, R. Martin Keen of Conestoga Vineyards, submitted a comment in support of the notice of proposed rulemaking. The petitioner also suggested minor clarifications in the boundaries of the proposed viticultural area.

Historical and Current Evidence of the Name

The name Lancaster Valley was documented in the petition as being long associated with the proposed area in eastern Pennsylvania. The viticultural area is located almost entirely within Lancaster County, and Lancaster is the largest and most important city within the area. Lancaster Valley is the name used by the Pennsylvania and United States Geologic Surveys to describe the region in the viticultural area.

Although Lancaster County was one area in which wine grapes were cultivated in the early part of the 19th Century, the area has not been known as a wine producing area until quite recently. Since the early 1970s, two wineries have been bonded within the Lancaster Valley and there are now approximately 41.5 acres of wine grapes in cultivation. ATF, therefore, believes that the historical and current evidence supports the viticultural area as a distinct grape-growing area.

Geographic Evidence

The petition established the Lancaster Valley viticultural area as a distinctive grape-growing region distinguished from surrounding areas on the basis of soil, topography and geology.

Lancaster Valley is located in the Lancaster-Frederic Lowland. Its topography is a nearly level valley, averaging 400 feet in elevation and decreasing in elevation from an average of 500 feet at its eastern edge to 300 feet at its western edge along the Susquehanna River. The valley is over 30 miles long, 12 miles wide and encompasses approximately 225,000 acres. Lancaster Valley is bounded on the north, east and south by areas of higher elevation ranging from 100 to 600 feet above the valley floor, and on the west by the Susquehanna River.

Soils found within the Lancaster Valley are typical of those derived from limestone, and include Conestoga, Beekmantown, Conococheague and Elbrook Limestones, and Ledger and Vintage dolomites. These soils are deep, well drained, hold moisture well, and are highly productive. They contrast sharply with soils found in the hills and upland areas surrounding the Lancaster Valley. Generally, the surrounding soils are composed of harder rocks (quartzite, schist, gneiss, etc.) which are more resistant to erosion and less fertile than the limestone soils found within the Lancaster Valley. The deep fertile soils of the valley were formed from the insoluble and weathered products left from the decay of the parent limestones.

Climate is not a factor in differentiating the Lancaster Valley viticultural area from surrounding areas.

Based on the information contained

in the petition pertaining to the geographical features, ATF has determined that this area is distinguishable from the surrounding area.

Boundaries

The boundaries, as proposed, consist of a combination of natural and manmade features. As proposed, the Lancaster Valley would consist of that area delineated on the east by the 500 foot contour line and the Welsh Mountains. The southern boundary includes the 500 foot contour line extending along Mine Ridge to the 76°07'30" line of longitude. From there the boundary passes in approximately a straight line south of Strasburg and Willow Street to the confluence of Stehman Run and the Conestoga River. The boundary continues along Indian Run and Wisslers Run to the 300 foot contour line. The western boundary consists of the 300 foot contour line above the Susquehanna River, Pennsylvania Highway 441 between Marietta and Bainbridge, but excludes the Manor Hills, Chestnut Hills, Chestnut Ridge, and the Chickies Ridge. The northern boundary is an irregular line extending from Bainbridge to Rheems, which then passes north of Mount Joy and south of Manheim, Lititz, Akron, Ephrata and Terre Hill to the intersection with Berks County at Pennsylvania Highway 23.

The petitioner supported the proposed boundaries but suggested minor clarifications in two of them. The petitioner suggested that proposed §§ 9.41(c)(25) and (26) be combined in one paragraph to read "then due south in a straight line for approximately 0.8 mile to Pennsylvania Highway 23." This language appears as § 9.41(c)(25). The second suggestion was to combine proposed §§ 9.41 (c)(31), (32), and (33) into two paragraphs to read "then east in a straight line for approximately 3.8 miles to the Erismans Church," and "then east in a straight line for approximately 3.3 miles to the point where the 400 foot contour line crosses Pennsylvania Highway 72 south of Valley View." Combining these paragraphs also allows deletion of the reference in proposed §§ 9.41(c)(31) and (32) to the intersection of Pennsylvania Highways 283 and 141. Highways 141 does not extend east of Mt. Joy to intersect with Highway 283. Therefore, the petitioner's recommended changes are adopted since the two new paragraphs, §§ 9.41(c)(30) and (31) are clearer and more accurate. Neither of these changes materially affects the boundaries of the viticultural area.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Lancaster Valley wines.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information

The principal author of this final rule is Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Wine, Viticultural areas.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended to add § 9.41. As amended, the table of sections reads as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.41 Lancaster Valley.

* * * * *

Paragraph 2. Subpart C is amended by adding § 9.41. As added, § 9.41 reads as follows:

§ 9.41 Lancaster Valley.

(a) *Name.* The name of the viticultural area described in this section is "Lancaster Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lancaster Valley viticultural area are two U.S.G.S. maps. They are entitled:

(1) "Lancaster County, Pennsylvania", scaled 1:50,000, edition of 1977; and

(2) "Honey Brook Quadrangle", 7.5 minute series, edition of 1955, photorevised 1969 and 1974.

(c) *Boundaries.* The Lancaster Valley viticultural area is located in Lancaster County and Chester County, Pennsylvania. The beginning point is where Pennsylvania Highway 23 crosses the Lancaster and Berks County boundary.

(1) Then in a southeasterly direction following the Lancaster County boundary for approximately 0.9 mile to the 500 foot contour line immediately south of the Conestoga River.

(2) Then following the 500 foot contour in a southwesterly direction to the Caernarvon-East Earl Township boundary.

(3) Then south approximately 0.1 mile following the Caernarvon-East Earl Township boundary to U.S. Highway 322.

(4) Then west following U.S. Highway 322 for approximately 1.7 miles to the electric transmission line between Fetterville and Cedar Grove School.

(5) Then southwest in a straight line for approximately 5.2 miles to the intersection of Earl, Upper Leacock, and Leacock Townships at the Mill Creek.

(6) Then southeast following the boundary between Earl Township and Leacock Township to the point where Earl, East Earl, Salisbury, and Leacock Townships intersect.

(7) Then east in a straight line for approximately 4.8 miles to the point where the 500 foot contour line inter-

sects Pequea Creek northwest of Mt. Pleasant School.

(8) Then following the 500 foot contour line past Cole Hill through the town of Gap and along Mine Ridge to the 76°07'30" west longitude line in Paradise Township.

(9) Then southwest in a straight line for approximately 7.7 miles to the Boehm Church south of Willow Street.

(10) The northwest in a straight line for approximately 1.2 miles to the township school in West Willow.

(11) Then west in a straight line for 4.2 miles to the confluence of Stehman Run and the Conestoga River.

(12) Then northwest in a straight line for approximately 0.5 mile to the confluence of Indian Run and Little Conestoga Creek.

(13) Then west following Indian Run for approximately 3.6 miles to the source of the more northerly branch.

(14) Then northwest in a straight line for approximately 0.25 mile to the source of Wisslers Run.

(15) Then west following Wisslers Run downstream for approximately 0.7 mile to the 300 foot contour line.

(16) Then north following the 300 foot contour line to its intersection with Pennsylvania Highway 999 in Washington Boro.

(17) Then east following Pennsylvania Highway 999 to the school in Central Manor.

(18) Then northeast in a straight line for approximately 2.7 miles to the point where the West Branch of the Little Conestoga Creek intersects with Pennsylvania Highway 462.

(19) Then west following Pennsylvania Highway 462 for approximately 1.5 miles to Strickler Run.

(20) Then following Strickler Run southwest to the Columbia municipal boundary.

(21) Then north following the eastern boundary of Columbia to Shawnee Run.

(22) Then northeast in a straight line for approximately 5.8 miles to the intersection of Pennsylvania Highway 23 and Running Pump Road [unnamed on map] at elevation check point 436 near Centerville.

(23) Then east following Pennsylvania Highway 23 for approximately 0.5 mile to the 400 foot contour line.

(24) Then following the 400 foot contour line north around Chestnut Ridge, past Millers Run and continuing until the 400 foot contour line intersects an unnamed stream.

(25) Then due south in a straight line for approximately 0.8 mile to Pennsylvania Highway 23.

(26) Then west following Pennsylvania Highway 23 to the intersection with Pennsylvania Highway 441 at Marietta.

(27) Then west following Pennsylvania Highway 441 to Pennsylvania Highway 241 near Bainbridge.

(28) Then northwest in a straight line for approximately 5.5 miles to the point where the Consolidated Railroad Corporation crosses the West Donegal-Mount Joy Township boundary in Rheems.

(29) Then east in a straight line for approximately 3.3 miles to the Mt. Pleasant Church.

(30) Then east in a straight line for approximately 3.8 miles to the Erismans Church.

(31) Then east in a straight line for approximately 3.3 miles to the point where the 400 foot contour line crosses Pennsylvania Highway 72 south of Valley View.

(32) Then following the 400 foot contour line east to Pennsylvania Highway 501.

(33) Then east in a straight line for approximately 2.9 miles to the Union Meetinghouse.

(34) Then southeast in a straight line for approximately 1.0 miles to the point where Pennsylvania Highway 272 (indicated as U.S. Highway 222 on the map) crosses Cocalico Creek (which forms the boundary between West Earl and Warwick Townships).

(35) Then northwest following the West Earl Township boundary to its intersection with U.S. Highway 322 southeast of Ephrata.

(36) Then east in a straight line for approximately 3.4 miles to the Lincoln Independence School.

(37) Then southeast in a straight line for approximately 1.7 miles to the West Terre Hill School.

(38) Then east in a straight line for approximately 8.5 miles to the beginning point.

Signed: April 1, 1982.

G. R. DICKERSON,
Director.

Approved: April 21, 1982.

JOHN M. WALKER, JR.,
Assistant Secretary, Enforcement and Operations.

(Filed by the Office of the Federal Register on May 11, 1982, 8:45 a.m. and published in the Federal Register on May 12, 1982, 47 F.R. 20300)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-105

27 CFR Part 9

Establishment of the Hudson River Region Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in New York State known as the "Hudson River Region." The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: July 6, 1982.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7602).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Mr. Allan W. MacKinnon, proprietor of Cottage Vineyards located in Marlboro-on-the-Hudson, New York, petitioned ATF for the establishment of a viticultural area in southeastern New York State to be known as "Hudson River Region." In response to this petition, ATF published a notice of proposed rulemaking (Notice No. 388) in the Federal Register on October 21, 1981 (46 FR 51619) proposing the establishment of the Hudson River Region viticultural area.

Current and Historical Viticultural Development

The Hudson River Region consists of approximately 3,500 square miles encompassing all of Columbia, Dutchess, and Putnam Counties, the eastern portions of Ulster and Sillivan Counties, nearly all of Orange County and the northern portions of Rockland and Westchester Counties.

There are nearly 1,000 acres of grapevines growing in the proposed area, with more than 90% of this located in Columbia and Ulster Counties.

There are 13 wineries in the proposed area, including 9 wineries which were established after a 1976 New York State law liberalized the qualification procedures for small wineries.

Wine has been made continuously in the Hudson River Region for over 300 years, since French Huguenots first settled at New Paltz, NY in 1677. The first commercial winery was established in 1827 on Croton Point in Westchester County. The oldest active winery in the United States was established in 1839 at Washingtonville, NY.

On January 8, 1974, one winery in the area received permission from ATF to use the words "Hudson River Region" on its labels. Since then, most wineries in the area have been using that designation.

The region has been recognized as a significant wine producing region in several articles in *The New York Times, The New York Daily News*, and *The Long Island Newsday*.

Leon Adams in *The Wines of America* refers to the area as the "oldest wine growing district in the United States."

In *Grapes of New York*, considered by the petitioner to be "the definitive tome on the subject of viticulture in the State of New York," written by U. P. Hedrick as the report of the New York Agricultural Experiment Station for the year 1907, the Hudson River District is defined as one of the four commercial grape districts in the State.

Geographical Features

The Hudson River Region has been referred to as one of the most complex geological regions in the world. The grape lands in the area are in a geological division known at the Taconic Province. Glacial deposits of shale, slate, schist and limestone form the soil throughout the region.

Climatography publications of New York and the United States show that the mean annual precipitation is approximately 44 inches. The mean date of the last freeze in spring is May 10, and the mean date of the first freeze in autumn is October 10. The mean growing season is approximately 153 days.

Comments

ATF received six comments in response to the notice of proposed rulemaking. The commenters were one government agency, Columbia County Environmental Management Council, and five vineyards located in the proposed area: Benmarl Wine Co., Cascade Mountain Vineyards, Cottage Vineyards (the petitioner), Clinton Vineyards, Inc., and North Salem Vineyards, Inc. All comments were in favor of establishment of the Hudson River Region viticultural area. None of the comments took issue with the proposed boundary. Therefore, the boundary is adopted as proposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, the Bureau has determined that this final regulation is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information

The principal author of this document is John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority and Issuance

This regulation is issued under the authority of 27 U.S.C. 205. Accordingly, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.47. As amended, the table of sections reads as follows:

Sec.
9.47 Hudson River Region.

Par. 2. Subpart C is amended by adding § 9.47. As amended, Subpart C reads as follows:

§ 9.47 Hudson River Region.

(a) *Name*. The name of the viticultural area described in this section is "Hudson River Region."

(b) *Approved maps*. The approved maps for determining the boundaries of Hudson River Region viticultural area are four U.S.G.S. maps, as follows:

(1) Albany (NK 18-6), scale of 1:250,00 series;

(2) Hartford (NK 18-9), scale of 1:250,000 series;

(3) Scranton (NK 18-8), scale of 1:250,000 series;

(4) Binghamton (NK 18-5), scale of 1:250,000 series.

(c) *Boundary*. The Hudson River Region viticultural area is located in New York State. The boundary is as follows:

(1) The beginning point is the point where N.Y. Route 15 (Merritt Parkway) crosses the New York-Connecticut state line.

(2) The boundary proceeds northerly along the New York-Connecticut state line and the New York-Massa-

chusetts state line to the northeast corner of Columbia County, New York.

(3) The boundary proceeds westerly along the Columbia County-Rensselaer County line to the Columbia County-Greene County line in the Hudson River.

(4) The boundary proceeds southerly along the Columbia County-Greene County line in the Hudson River to the northeast corner of Ulster County.

(5) The boundary proceeds westerly along the Ulster County-Greene County line to N.Y. Route 214.

(6) The boundary proceeds southerly along the eastern side of N.Y. Route 214 to the junction with N.Y. Route 28 in Phoenicia.

(7) The boundary proceeds southerly along the eastern side of N.Y. Route 28 to the junction with N.Y. Route 28A.

(8) The boundary proceeds southerly along the eastern side of N.Y. Route 28A to the intersection with the secondary, hard surface, southbound road leading toward Samsonville.

(9) The boundary proceeds southerly along the eastern side of this southbound road through Samsonville, Tabasco, Mombaccus, Fantinekill, and Pataukunk to the junction with U.S. Route 209.

(10) The boundary proceeds southerly along the eastern side of U.S. Route 209 to the New York-Pennsylvania state line in the Delaware River.

(11) The boundary proceeds easterly along the Delaware River to the New York-New Jersey state line.

(12) The boundary proceeds easterly along the New York-New Jersey state line to N.Y. Route 17.

(13) The boundary proceeds northerly along the western side of N.Y. Route 17 to the junction with Interstate Route 287.

(14) The boundary proceeds easterly along the northern side of Interstate Route 287 to the junction with N.Y. Route 15.

(15) The boundary proceeds easterly along the northern side of N.Y. Route 15 to the beginning point.

Signed: April 22, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: May 13, 1982.

JOHN M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on June 3, 1982; 8:45 a.m., and published in the Federal Register for June 4, 1982; 47 F.R. 24293)

TITLE 27 – ALCOHOL, TOBACCO PRODUCTS AND FIREARMS – CHAPTER I – BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-106

27 CFR Part 9

Establishment of the Lime Kiln Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule establishes the Lime Kiln Valley viticultural area in San Benito County, California. The viticultural area, as established by this rule, differs from the proposed area of the petitioner, Enz Vineyards of Hollister, California. The original area covered approximately 9,500 acres while the approved area covers approximately 2,300 acres.

The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Lime Kiln Valley as a viticultural area and its subsequent use as

an appellation of origin on wine labeling and in advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: July 6, 1982.

FOR FURTHER INFORMATION CONTACT:

Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37671, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR for the listing of approved viticultural areas.

Section 9.11, Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

ATF was petitioned to establish a viticultural area in San Benito County to be named "Lime Kiln Valley." The petitioner, in describing the climatic characteristics of the proposed area, stated that the western end of the proposed area, which is mountainous, received an average of 40 inches of rainfall per year, while the eastern end, being the valley floor, received an average of 16 inches a year.

Subsequently, ATF issued Notice No. 352, published in the Federal Register on October 27, 1980 (45 FR 70913), proposing the establishment of Lime Kiln Valley as a viticultural area. The boundaries of the proposed area were described by summits of peaks and generally followed the area's watershed boundary.

A public hearing concerning the establishment of Lime Kiln Valley was held in Hollister, California, on January 21, 1981. The testimony at the hearing supported the establishment of a viticultural area, but a problem arose concerning the amount of rainfall within the proposed boundaries.

The petitioner stated that the variation in the rainfall would affect any grapes grown in the mountainous area differently than the grapes grown on the valley floor. Witnesses state that no grapes were grown in the mountainous area and no plantings were anticipated. Vineyard expansions planned are in the area included within the amended boundaries of the viticultural area. After evaluating the entire record concerning the climate of the area, ATF believed the boundaries of the proposed Lime Kiln Valley should be amended to exclude the mountainous areas. This change would limit the proposed viticultural area to one which exhibits uniform climatic characteristics. To accomplish this, ATF published Notice No. 387 (46 FR 49599, October 7, 1981) which proposed an amended boundary based primarily on the 1,400-foot contour line and Cienega Road. With this amended boundary, Lime Kiln Valley qualifies as a distinct grape-growing region.

Included within the viticultural area is one winery, approximately 80 acres cultivated by two growers (one being the petitioner), and planned expansion by Enz Vineyards of another 100 acres.

Evidence Relating to the Name

The area derived its name from a number of lime kilns built in the area. Many of the kilns were in operation prior to 1910. Witnesses testified that this particular valley, although a portion of the larger Cienega Valley, has always been distinct and known as Lime Kiln Valley. Furthermore, on September 6, 1977, the County Board of Supervisors unanimously adopted a resolution which formally named the area "Lime Kiln Valley." Vineyards were planted in this area in 1887, and the history of San Benito County relates to vine cuttings brought from France and obtained by the Spanish padres in the area. The Enz Vineyards and winery has been producing and marketing wine referring to a Lime Kiln Valley appellation since the early 1970's.

One commenter stated the name "Lime Kiln Valley" is not an historical name for the area and noted that the name "Lime Kiln Valley" does not appear on any U.S.G.S. maps of the area.

After evaluating the information contained in the petition and the comments received, ATF believes the historical and current evidence does support the name "Lime Kiln Valley" as a distinct viticultural area.

Geographical Evidence

In accordance with 27 CFR 4.25a (e)(2), a viticultural area should possess geographical features which distinguish it from surrounding areas.

With the amended boundaries, the area averages about 16 inches of rainfall a year. Witnesses stated this amount is slightly higher than the surrounding areas, which average about 15 inches per year.

Winter temperatures average well below freezing, while the summer temperatures vary from 85-95 degrees during the day and drop to about 45-50 degrees at night. Witnesses further stated that these temperatures are cooler in the winter and warmer in the summer than the surrounding areas.

The soil in Lime Kiln Valley is basically a sandy and gravelly loam overlying bedrock of dolomite and limestone.

One commenter stated that the climate, topography, and soil of the proposed "Lime Kiln Valley" viticultural area was not distinct from the larger Cienega Valley. In addition, this commenter stated that the proposed area was too small to be of any consequence and its approval as a viticultural area would create a de facto monopoly.

Based on the evidence discussed earlier, ATF believes the written and oral testimony supports the fact that the Lime Kiln Valley exhibits distinct geophysical and climatic characteristics and is distinguishable as a separate valley from the larger, more generally defined, Cienega Valley. The size of an area and whether or not it creates a de facto monopoly are not criteria in determining the distinctiveness of a proposed area. Therefore, ATF is establishing the Lime Kiln Valley as a viticultural area.

Boundaries

As discussed earlier, Notice No. 387 was issued to amend the boundaries as originally proposed. ATF believes the boundaries now used delineate an area which exhibits similar characteristics, but differ from surrounding areas. The boundaries are described by primarily Cienega Road and the 1,400-foot contour line.

While ATF believes that viticultural area boundaries based solely on manmade features are inappropriate, where such features closely approximate natural features, or where they provide a demarcation line from grape-growing areas as opposed to areas not suitable for grape-growing, or where they provide a line to delineate a climatic feature, it is acceptable to use these man-made features in describing boundaries.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it will not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 604) for a final regulatory flexibility analysis shall not apply to this final rule.

Disclosure

Copies of the petition, the maps, comments, notices, the hearing proceedings, and the final rule are available for inspection during normal business hours at ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, 12th and Pennsylvania Avenue, NW, Washington, DC.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on wine labels. Any commercial advantage gained can only be substantiated by consumer acceptance of Lime Kiln Valley wines.

Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices participated in the preparation of this document, both in matters of substance and style.

Federal Register Index Terms

27 CFR Part 9; Administrative Practice and Procedure; Consumer Protection; Wine.

Authority

Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.27. As amended, the table of sections reads as follows:

Sec.
9.27 Lime Kiln Valley.

Par. 2. Subpart C is amended by adding § 9.27. As amended, Subpart C reads as follows:

§ 9.27 Lime Kiln Valley.

(a) *Name.* The name of the viticultural area described in this section is "Lime Kiln Valley."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Lime Kiln Valley viticultural area are two U.S.G.S. maps entitled:

(1) "Mount Harlan Quadrangle,

California," 7.5 minute series; and

(2) "Paicines Quadrangle, California," 7.5 minute series.

(c) *Boundaries.* The Lime Kiln Valley viticultural area is located in San Benito County, California. From the beginning point at the intersection of Thompson Creek and Cienega Road, the boundary proceeds, in a straight line to the summit of an unnamed peak (1,288 feet) in the northwest quarter of Section 28, T.14 S./R.6 E.;

(1) Thence in a straight line from the summit of the unnamed peak (1,288 feet) to a point where it intersects the 1,400-foot contour line, by the elevation marker, in the southwest quarter of T.14 S./R.6 E, Section 28;

(2) Thence following the 1,400-foot contour line through the following sections; Sections 28, 29, and 30, T.14 S./R.6 E.; Section 25, T.14 S./R.5 E.; Sections 30, 19, 20, and returning to 19, T.14 S./R.6 E., to a point where the 1,400-foot contour line intersects with the section line between Sections 19 and 18, T.14 S./R.6 E.;

(3) Thence in a straight line to the Cienega School Building along Cienega Road;

(4) Thence along Cienega Road to the point of beginning.

Signed: April 8, 1982.

G. R. DICKERSON,
Director.

Approved: May 11, 1982.

JOHN M. WALKER, JR.,
Assistant Secretary of (Enforcement and Operations).

(Filed by the office of the Federal Register on June 3, 1982; 8:45 a.m., and published in the Federal Register for June 4, 1982, 47 F.R. 24295)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-104

27 CFR Parts 18 and 240

Reduction of the Regulatory Requirements on Producers of Volatile Fruit-Flavor Concentrate

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule minimizes the regulatory requirements on producers of volatile fruit-flavor concentrate. These regulatory requirements appear in 27 CFR Parts 18 and 240.

Due to the limited jeopardy to the revenue, absence of pattern of abuse, and the small number of producers, ATF feels the continuation of historical regulatory requirements pertaining to concentrate producers is not in the best interest of the industry or the Government. ATF also feels the liberalization of these regulatory requirements is not contrary to its duty to protect the revenue. Therefore, ATF is issuing this final rule which promotes industry and Government efficiency by relaxing, where possible, regulatory requirements while continuing to provide adequate protection to the revenue.

EFFECTIVE DATE: July 2, 1982

FOR FURTHER INFORMATION CONTACT:

Jim Whitley, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On September 18, 1981, ATF published Notice of Proposed Rulemaking No. 384 in the Federal Register (46 FR 46340), proposing to minimize the regulatory requirements on producers of volatile fruit-flavor concentrate. ATF solicited public comment concerning the proposal. Specific comments were requested concerning other regulatory requirements which could be liberalized or deleted, elimination of the requirements for a bond, changes in the elimination of certain recordkeeping requirements, and the benefit or detriment to the industry and the consumer perceived to result from implementation of the proposed rule.

Written Comments

ATF received four comments in response to its notice of proposed rulemaking. These comments were of a general nature and fully supported the changes advanced in the notice of proposed rulemaking. All of the comments were from industry members who produce volatile fruit-flavor concentrate from citrus fruit.

Two commenters recommended the manufacture of volatile fruit-flavor concentrate from citrus fruit be totally exempted from regulatory requirements since, although containing alcohol, they are nonpotable in their concentrated form because of their natural constituents. ATF acknowledges this recommendation; however, for the following reasons, it cannot be adopted. It is ATFs understanding that although some volatile fruit-flavor concentrates manufactured from citrus fruit are nonpotable because of their natural constituents, some are potable. In addition, volatile fruit-flavor concentrate manufactured from citrus fruit, or any other type of volatile fruit-flavor concentrate, may be diluted to the point it becomes a potable alcoholic solution which may be used for beverage purposes. For these reasons, ATF believes the general exemption of any manufacturer of volatile fruit-flavor concentrate from regulatory requirements would be inappropriate and contrary to our obligation to protect the revenue. Furthermore, to protect the revenue, Congress, by statute (26 U.S.C. 5001(a)(7) and 26 U.S.C. 5511), made all manufacturers and the manufacturing of volatile fruit-flavor concentrate subject to regulatory requirements. As a result, ATF may not exempt any manufacturer or the manufacturing of volatile fruit-flavor concentrate from the purview of the regulations.

New Regulations

This final rule revises the regulations in 27 CFR Part 18. These regulations relate to the location, construction, arrangement, equipment, and qualification of plants for the manufacture of volatile fruit-flavor concentrate (essence); and to the production, removal, sale, transportation, and use of concentrate and of the fruit mash or juice from which concentrate is produced. In addition, conforming revisions are made to 27 CFR Part 240.

This final rule provides simplified guidelines for the qualification and operation of concentrate plants. Numerous regulatory requirements are diminished or deleted. The major changes made to 27 CFR Part 18 and 27 CFR Part 240 are as follows:

(a) 27 CFR Part 18.

(1) *Qualification.* The requirement for submission of a plat and plan depicting the concentrate plant premises is deleted. The requirement for submission of a detailed plant description that includes major equipment, flow plants, and a statement of process is deleted. The requirement for listing all officers and directors is diminished

to require only a listing of the officers and directors who have responsibility in connection with the operation of the concentrate plant.

(2) *Changes in proprietorship, control, and name.*

Changes in proprietorship, control, and name must still be submitted. However, the requirements have been made less stringent.

(3) *Changes in equipment and process.* The requirement to file an amended application covering changes in plant equipment (except stills) or the production process is deleted.

(4) *Bonds.* Bonds and consents of surety are no longer required.

(5) *Operations.* Operational requirements are relaxed. Equipment need not be marked as to use, etc., unless required by the regional regulatory administrator. Submission of a sample of each high-proof concentrate to be produced is no longer required. The concentrate plant proprietor will now be responsible for determining whether a particular concentrate is a high-proof concentrate. However, a proprietor may at any time submit a sample to the ATF National Laboratory for a determination of whether a concentrate is unfit for beverage use (nonpotable). The requirement that a proprietor notify the regional regulatory administrator of his suspension and resumption of operations is deleted.

(6) *Forms.* Four ATF forms are eliminated, one ATF form is changed from a monthly to an annual report, and one form is no longer required to be submitted by concentrate plant proprietors.

ATF Forms 3873(5520.1)—Application for Fruit-Flavor Concentrate and 3874 (5520.5)—Notice of Transfer of Fruit-Flavor Concentrate are eliminated, ATF Form 1694 (5110.70)—Concentrate Manufacturer's Bond is eliminated. ATF Form 1695(5520.2)—Monthly Report of Concentrate Manufacturer is changed to an annual report. ATF Form 1533 (5000.18)—Consent of Surety is no longer required. ATF Form 27-G SUPPLEMENTAL (5520.4)—Application for Production of High Proof Concentrate is eliminated.

(7) *Records.* Where feasible, commercial records have been substituted for prescribed forms. A commercial record of transfer for all products shipped from a concentrate plant is now required. The record of transfer covering products shipped to a bonded wine cellar replaces the certificate that a bonded wine cellar proprietor secured from a concentrate plant proprietor.

(b) 27 CFR Part 240.

Several conforming changes are made to 27 CFR Part 240 regarding the elimination of ATF Forms 3873(5520.1) and 3874(5520.5). The recording of losses in transit or other discrepancies for concentrate received, which was formerly done on ATF Form 3874(5520.5), is transferred to the commercial record of material received and used.

General Information

These regulations modernize and simplify the requirements for proprietors to qualify and operate concentrate plants. In addition, where possible, ATF has minimized the regulatory requirements on producers of concentrate. As revised, 27 CFR Part 18 contains 37 regulation sections. This is a decrease of 34 sections. As stated previously, four public use forms are eliminated.

Furthermore, proprietors of concentrate plants benefit from this rule, in that potentially costly administrative burdens have been alleviated. Each major change, detailed in the NEW REGULATIONS portion of this preamble, is modernizing, liberalizing, and simplifying in nature. In addition, ATF feels these changes reflect an adherence to the spirit as well as the letter of Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. This rule is not expected to: Have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal authors of this document are John Ference and Jim Whitley of the Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

List of Subjects

27 CFR Part 18

Administrative practice and procedure, Authority delegations, Excise taxes, Exports, Labeling, Reporting requirements, Security measures, Spices and flavorings, Stills, and Surety bonds;

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfer, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific Equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine, and Vinegar.

Authority and Issuance

Accordingly, under the authority in 26 U.S.C. 7805 (68A Stat. 917), the regulations contained in 27 CFR Part 18—Production of Volatile Fruit-Flavor Concentrate and 27 CFR Part 240—Wine are, respectively, revised and amended as follows:

Sec. A. Part 18 is revised in its entirety as follows:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

Subpart A—Scope

Sec.
18.1 Scope.
18.2 Applicability of law.
18.3 Unlawful operations.

Subpart B—Definitions

18.11 Meaning of terms.

Subpart C—Administrative and Miscellaneous Provisions

18.13 Alternate methods or procedures.

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Document Requirements

18.17 Retention of documents.
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18.52 Production of high-proof concentrate.
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18.54 Transfer of concentrate.
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Subpart F—Records and Reports

18.61 Records and reports.
18.62 Record of transfer.
18.63 Record of transfer to a bonded wine cellar.
18.64 Photographic copies of records.
18.65 Annual report.

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805), unless otherwise noted.

Subpart A—Scope

§ 18.1 Scope.

The regulations in this part relate to the qualification and operation (including activities incident thereto) of plants for the manufacture of volatile fruit-flavor concentrate (essence). The regulations in this part apply to the several States of the United States and the District of Columbia.

§ 18.2 Applicability of law.

Except as specified in 26 U.S.C. 5511, the provisions of 26 U.S.C. Chapter 51 are not applicable to the manufacture, by any process which includes evaporations from the mash or juice of any fruit, or any volatile fruit-flavor concentrate if—

(a) The concentrate, and the mash or juice from which it is produced, contains no more alcohol than is reasonably unavoidable in the manufacture of the concentrate: and

(b) The concentrate is rendered unfit for use as a beverage before removal from the place of manufacture, or (in the case of concentrate which does not exceed 24 percent alcohol by volume) the concentrate is transferred to a bonded wine cellar for use in the production of natural wine; and

(c) The manufacturer of concentrate complies with all requirements for the protection of the revenue with respect to the production, removal, sale, transportation, and use of concentrate, and of the mash or juice from which it is produced, as may be prescribed by this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

§ 18.3 Unlawful operations.

(a) A manufacturer of concentrate who violates any of the conditions stated in § 18.2 is subject to the taxes and penalties otherwise applicable under 26 U.S.C. Chapter 51 in respect to such operations.

(b) Any person who sells, transports, or uses any concentrate or the mash or juice from which it is produced in violation of law or regulations is subject to all the provisions of 26 U.S.C. Chapter 51 pertaining to distilled spirits and wines, including those requiring the payment of the tax thereon.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Subpart B—Definitions

§ 18.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

ATF officer. An officer or employe of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bonded wine cellar. Premises established under 27 CFR Part 240 for the production, blending, cellar treatment, storage, bottling, or packaging of untaxpaid wine, and includes premises designated as "bonded winery."

Concentrate. Any volatile fruit-flavor concentrate (essence) produced by any process which includes evaporations from any fruit mash or juice.

Concentrate plant. An establishment qualified under this part for the production of concentrate.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the application, report, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this____(insert type of document, such as application or report), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct and complete."

Fold. The ratio of the volume of the fruit mash or juice to the volume of the concentrate produced from the fruit mash or juice. For example, one gallon of concentrate of 100-fold would be the product from 100 gallons of fruit mash or juice.

Fruit. All products commonly known and classified as fruit, berries, or grapes.

Fruit mash. Any unfermented mixture of juice, pulp, skins, and seeds prepared from fruit, berries, or grapes.

High-proof concentrate. For the purposes of this part, "high-proof concentrate" means a concentrate (essence), as defined in this section, that has an alcohol content of more than 24 percent by volume and is unfit for beverage use (nonpotable) because of its natural constituents, i.e. without the addition of other substances.

Juice. The unfermented juice (concentrated or unconcentrated) of fruit, berries, or grapes, exclusive of pulp, skins, or seeds.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Processing material. The fruit mash or juice from which concentrate is produced.

Proprietor. A person qualified under this part to operate a concentrate plant.

Regional regulatory administrator. The principal ATF regional official responsible for administering regulations in this part.

Registry number. The number assigned to a concentrate plant by the regional regulatory administrator.

U.S.C. The United States Code.

Subpart C—Administrative and Miscellaneous Provisions

§ 18.13 Alternate methods or procedures.

(a) *General.* The proprietor, on specific approval by the Director, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

(b) *Application.* A proprietor who desires to employ an alternate method or procedure shall submit a written application to the regional regulatory administrator, for transmittal to the Director. The application will specifically describe the proposed alternate method or procedure and set forth the reasons therefor. Alternate methods or procedures may not be employed until the application has been approved by the Director. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the authorization.

§ 18.14 Emergency variations from requirements.

(a) *General.* The regional regulatory administrator may approve emergency variations from requirements specified in this part, where the regional regulatory administrator finds that an emergency exists, the proposed variations are necessary, and the proposed variations—

(1) Will afford the security and protection to the revenue intended by the prescribed specifications;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations stated in the approval of the application. Failure to comply in good faith with such procedures, conditions and limitations will automatically terminate the authority for such variations and the proprietor thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the regional regulatory administrator the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation.

(b) *Application.* A proprietor who desires to employ emergency variations shall submit a written application to the regional regulatory administrator. The application will describe the proposed variations and set forth the reasons therefor. Variations will not be employed until the application has been approved, except when an emergency requires immediate action to correct a situation that is threatening to life or property. Such corrective action may then be taken concurrent with the filing of the application and notification of the regional regulatory administrator via telephone.

§ 18.15 Right of entry and examination.

ATF officers may at all times, as well by night as by day, enter any concentrate plant to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as they deem necessary. Whenever ATF officers, having demanded admittance and declared their name and office, are not admitted into such premises by the proprietor or other persons having charge thereof, they may at all times use such force as is necessary for them to gain entry to such premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1357, as amended, 1392, as amended (26 U.S.C. 5203, 5511))

§ 18.16 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form will be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form will be furnished as required by this part.

(b) The forms required by this part are detailed in "Public Use Forms" (ATF Publication 1322.1), a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(c) Submit requests for forms to the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

Document Requirements

§ 18.17 Retention of documents.

The proprietor shall maintain a file of all approved applications and other documents, on or convenient to the concentrate plant premises, available for inspection by ATF officers.

§ 18.18 Execution under penalties of perjury.

When a form or other document called for under this part is required to be executed under penalties of perjury, it will be so executed, as defined in § 18.11, and signed by an authorized person.

(Act of August 16, 1954, Pub. L. 591, Chapter 736, 68A Stat. 749 (26 U.S.C. 6065))

§ 18.19 Security.

The concentrate plant and equipment will be so constructed, arranged, equipped, and protected as to afford adequate protection to the revenue and facilitate inspection by ATF officers.

Subpart D—Qualification

§ 18.21 General.

A person who desires to engage in the business of manufacturing concentrate shall submit an application for registration on Form 27-G (5520.3) to the regional regulatory administrator and receive approval as provided in this part. All written statements, affidavits, and other documents submitted in support of the application or incorporated by reference are deemed a part thereof.

§ 18.22 Restrictions as to location and use.

(a) *Restrictions.* A concentrate plant may not be established in any dwelling house or on board any vessel or boat, or on any premises where any other business is conducted. The premises of a concentrate plant may be used only for the business stated in the approved application for registration.

(b) *Exceptions.* The regional regulatory administrator may authorize (1) the establishment of a concentrate plant on premise where other business is conducted, or (2) the use of the premises of a concentrate plant for other business. A person or proprietor desiring such authorization shall submit a written application to the regional regulatory administrator. The application will describe the other business by type and the premises to be used. If the premises of a concentrate plant are to be used for other business, the relationship (if any) to the concentrate plant will be described in the application. A concentrate plant may not be established on premises where other business is conducted or used to conduct other business until the application is approved. The regional regulatory administrator may decline to approve the application or withdraw the authorization if the revenue is jeopardized or the effective administration of this part is hindered.

§ 18.23 Stills.

(a) Any stills set up on concentrate plant premises and intended for the production of concentrate will be registered with the regional regulatory administrator of the region in which located, as required by 27 CFR 196.45. The listing of stills in the application and the approval of the application constitutes registration of such stills.

(b) The special occupational and commodity taxes imposed by 26 U.S.C. 5101 are not applicable to any stills set up on concentrate plant premises and used in the production of concentrate pursuant to this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1355, as amended, 1392, as amended (26 U.S.C. 5179, 5511))

Application

§ 18.24 Date for application.

Applications on Form 27-G (5520.3) will include the following:

(a) Serial number;

(b) Name and principal business address of the applicant, and the location of the plant if different from the business address;

(c) Purpose for which filed;

(d) Information regarding proprietorship, supported by the organizational documents listed in § 18.25; and

(e) Description of each still and a statement of its maximum capacity. Where any of the information required by this section is on file with the regional regulatory administrator, that information, if accurate and complete may be incorporated by reference by the applicant and made a part of the application.

§ 18.25 Organizational documents.

The supporting information required by paragraph (d) of § 18.24 includes, as applicable:

(a) Extracts from the articles of incorporation or from the minutes of meetings of the board of directors, authorizing the incumbents of certain offices,or other persons, to sign for the corporation;

(b) Names and addresses of the officers and directors (Do not list officers and directors who have no responsibility in connection with the operation of the concentrate plant.);

(c) Names and addresses of the 10 persons having the largest ownership or other interest in the corporation or other entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another for him; and

(d) In the case of an individual owner or partnership, the name and address of every person interested in the concentrate plant, whether the interest appears in the name of interested party or in the name of another for him.

§ 18.26 Powers of attorney.

The proprietor shall execute and file with the regional regulatory administrator a Form 1534 (5000.8) for every person authorized to sign or to act on behalf of the proprietor. (Not required for persons whose authority is furnished in the application.)

§ 18.27 Additional requirements.

(a) The regional regulatory administrator, to protect the revenue, may require—

(1) Additional information in support of an application for registration;

(2) Marks on major equipment to show serial number, capacity, and use;

(3) Installation of meters, tanks, pipes, or other apparatus; and

(4) Installation of security devices.

(b) Any proprietor refusing or neglecting to comply with any requirement of this section shall not be permitted to operate.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1349, as amended, 1353, as amended, 1395, as amended (26 U.S.C. 5172, 5178, 5552))

Changes After Original Establishment

§ 18.31 General requirements.

Where there is a change with respect to the information shown in the application, the proprietor shall submit, within 30 days of the change (except as otherwise provided in this part), an amended application on Form 27-G (5520.3).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

§ 18.32 Change in name.

The proprietor shall submit an amended application to cover any change in the individual, firm, or corporate name.

§ 18.33 Change in location.

The proprietor shall submit an amended application to cover a change in the location of a concentrate plant. Operation of the concentrate plant may not be commenced at the new location prior to approval of the amended application.

§ 18.34 Continuing partnerships.

If, under the laws of the particular State, the partnership is not immediately terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to operate the plant under the prior qualification of the partnership. If the surviving partner acquires the business on completion of the settlement of the partnership, such partner shall qualify in his own name from the date of acquisition, as provided in § 18.35. The rule set forth in this section also applies where there is more than one surviving partner.

§ 18.35 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a concentrate plant, the outgoing proprietor shall comply with the requirements of § 18.38, and the successor shall, before commencing operations, file application and receive approval in the same manner as a person qualifying as the proprietor of a new concentrate plant. Processing material, concentrate and other materials may be transferred from an outgoing proprietor to a successor.

(b) *Fiduciary.* A successor to the proprietorship of a concentrate plant who is an administrator, executor, receiver, trustee, assignee, or other fiduciary shall comply with the provisions of paragraph (a) of this section. If the fiduciary was appointed by a court, the effective dates of the qualifying documents filed by the fiduciary shall be the effective date of the court order, or the date specified therein for the fiduciary to assume control. If the fiduciary was not appointed by a court, the date the fiduciary assumes control shall coincide with the effective date of the qualifying documents filed by the fiduciary.

§ 18.36 Change in officers and directors.

The proprietor shall submit an amended application to cover changes in the list of officers and directors furnished under the provisions of § 18.25.

§ 18.37 Change in stockholders.

The proprietor shall submit changes in the list of stockholders furnished under the provisions of § 18.25 annually on May 1. When the sale or transfer of capital stock results in a change of control or management of the business, the proprietor shall comply with the provisions of § 18.35.

§ 18.38 Permanent discontinuance.

A proprietor who permanently discontinues the business of a concentrate manufacturer shall, after completion of operations, file an application on Form 27-G (5520.3) to cover such discontinuance, giving the date of the discontinuance.

Subpart E—Operations

§ 18.51 Processing material.

(a) *General.* A proprietor may produce processing material or receive processing material produced elsewhere. Fermented processing material may not be used in the manufacture of concentrate. Processing material may be used if it contains no more alcohol than is reasonably unavoidable, and must be used when produced, or as soon thereafter as practicable.

(b) *Record of processing material.* A proprietor shall maintain a record, by kind and quantity, of processing material used.

§ 18.52 Production of high-proof concentrate.

(a) *General.* High-proof concentrate may be produced in a concentrate plant. Concentrate having an alcohol content of more than 24 percent by volume that is fit for beverage use may not be produced in a concentrate plant.

(b) *Determination.* A proprietor shall determine whether a particular concentrate is a high-proof concentrate. However, a proprietor may at any time submit a written request to the Director for a determination of whether a concentrate is unfit for beverage use. Each request for a determination will include information as to kind, percent alcohol by volume, and fold of the concentrate. The request will be accompanied by a representative 8-ounce sample of the concentrate.

§ 18.53 Use of concentrate.

Concentrate may be used in the manufacture of any product made in the conduct of another business authorized to be conducted on concentrate plant premises under the provisions of § 18.22, if such product contains less than one-half of one percent of alcohol by volume.

§ 18.54 Transfer of concentrate.

(a) *Concentrate unfit for beverage use.* Concentrate (including high-proof concentrate and concentrate treated as provided in paragraph (c) of this section) unfit for beverage use may be transferred for any purpose authorized by law.

(b) *Concentrate fit for beverage use.* Concentrate fit for beverage use may be transferred only to a bonded wine cellar. If such concentrate is rendered unfit for beverage use, it may be transferred as provided in paragraph (a) of this section.

(c) *Rendering concentrate unfit for beverage use.* Concentrate may be rendered unfit for beverage use by reducing the alcohol content to not more than 15 percent alcohol by volume (if the reduction does not result in a concentrate of less than 100-fold), and adding to each gallon thereof, in a quantity sufficient to render the concentrate unfit for beverage use, the following:

(1) Sucrose; or

(2) Concentrated fruit juice, of at least 70 Brix, made from the same

kind of fruit as the concentrate; or

(3) Malic, citric, or tartaric acid.

(d) *Record of transfer.* The proprietor shall record transfers of concentrate (including high-proof concentrate) on a record of transfer as required in §§ 18.62 or 18.63.

§ 18.55 Label.

Each container of concentrate will have affixed thereto, before transfer, a label identifying the product and showing (a) the name of the proprietor; (b) the registry number of the plant; (c) the address of the plant; (d) the number of wine gallons; and (e) the percent of alcohol by volume.

§ 18.56 Return of concentrate.

(a) *General.* The proprietor of a concentrate plant may accept the return of concentrate shipped by him.

(b) *Record of returned concentrate.* When the returned concentrate is received, the proprietor shall record the receipt, including a notation regarding any loss in transit or other discrepancy.

(c) *Report of returned concentrate.* The quantity of returned concentrate received will be reported on an unused line on the annual report Form 1695 (5520.2).

Subpart F—Records and Reports

§ 18.61 Records and reports.

(a) *General.* Each proprietor shall keep records and reports as required by this part. These records and reports will be maintained on or convenient to the concentrate plant and will be available for inspection by ATF officers during business hours. Records and reports will be retained by the proprietor for three years from the date they were prepared, or three years from the date of the last entry, whichever is later.

(b) *Records.* Each proprietor shall keep such records relating to or connected with the production, transfer, or return of concentrate and the juice or mash from which it is produced, as will (1) enable any ATF officer to verify operations and to ascertain whether there has been compliance with law and regulations, and (2) enable the proprietor to prepare Form 1695 (5520.2). A proprietor need not prepare a specific record to meet the record requirements of this part. Any book, paper, invoice, bill of lading, or similar document that the proprietor prepares or receives for other purposes may be used, if all required information is shown.

(c) *Reports.* Each proprietor shall prepare and submit reports (including applications) as required by this part.

§ 18.62 Record of transfer.

When concentrate, juice, or fruit mash is transferred from the concentrate plant premises, the proprietor shall prepare, in duplicate, a record of transfer. The record of transfer may consist of a commercial invoice, bill of lading, or any other similar document. The proprietor shall forward the original of the record of transfer to the consignee and retain the copy as a record. Each record of transfer shall show the following information:

(a) Name, registry number, and address of the concentrate plant;

(b) Name and address of the consignee;

(c) Kind (by fruit from which produced) and description of product, e.g. grape concentrate, concentrated grape juice, unconcentrated grape juice, grape mash;

(d) Quantity (in wine gallons); and

(e) For concentrate, percent of alcohol by volume.

(Sec. 201, Pub. L. 85 859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

§ 18.63 Record of transfer to a bonded wine cellar.

A proprietor transferring concentrate, juice, or fruit mash to a bonded wine cellar shall prepare a record of transfer as required by § 18.62 and enter the following additional information:

(a) Registry number of the bonded wine cellar;

(b) For each product manufactured from grapes or berries, variety of grape or berry;

(c) For concentrate, fold;

(d) For juice and fruit mash, whether volatile fruit flavor has been removed and, if so, whether the identical volatile fruit flavor has been restored; and

(e) For concentrated juice, total solids content before and after concentration.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

§ 18.64 Photographic copies of records.

Proprietors may record, copy, or reproduce records required by this part by any process which accurately reproduces or forms a durable medium for reproducing the original of records. Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing, and using the reproduced record the same as if it wer the original record. The reproduced record will be treated and considered for all purposes as though it were the original record. All provisions of law and regulation applicable to the original record are applicable to the reproduced record.

§ 18.65 Annual report.

An annual report, on Form 1695 (5520.2), of concentrate plant operations shall be prepared by each proprietor. The report will be forwarded to the regional administrator not later than 15 days after the close of the calendar year for which rendered. When a proprietor permanently discontinues the business of manufacturing concentrate, the proprietor shall submit the annual report not later than 15 days after such discontinuance and mark the report "Final Report."

PART 240—WINE

Section B. Part 240 is amended as follows:

Par. 1. The table of sections is amended to remove the section headings for §§ 240.359a and 240.359b and to revise the section headings for §§ 240.357, 240.358 and 240.359. The revised section headings read as follows:

* * * * *

Sec.
240.357 General.
240.358 Use of volatile fruit-flavor concentrate in collar treatment of natural wine.
240.359 Use of juice (or must) from which volatile fruit flavor has been removed.

* * * * *

Paragraph 2. Section 240.353 is revised. As revised, § 240.353 reads as follows:

§ 240.353 Concentrated and unconcentrated fruit juice.

Concentrated fruit juice reduced with water to its original density, or to 22 degrees Brix, or to any degree of Brix between its original density and 22 degrees Brix, and unconcentrated fruit juice reduced with water to not less than 22 degree Brix, shall be deemed to be juice for the purpose of standard wine production. Where concentrated fruit juice is received on bonded wine cellar premises from other than a concentrate plant, the proprietor shall procure from the producer a certificate stating the kind of fruit juice from which it was produced and the total solids content of such juice before and after concentration. Concentrated or unconcentrated fruit juice may be used in juice or wine made from the same kind of fruit for purposes of developing alcohol by fermentation or for sweetening as provided in this part. Concentrated fruit juice, or juice which has been concentrated and reconstituted, may not be used in standard wine production if at any time it was concentrated to more than 80 degrees Brix.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Paragraph 3. Sections 240.357 through 240.359 are revised. As revised, these sections read as follows:

§ 240.357 General.

A proprietor may receive volatile fruit-flavor concentrate for use in the production of wine as provided in this part. A proprietor may, for any legitimate reason, return volatile fruit-flavor concentrate to the concentrate plant from which it was received, if the proprietor of the concentrate plant consents to the return. If volatile fruit-flavor concentrate is not used immediately, it will be stored on the bonded premises separately from essences and flavors which may be on hand for use in the production of special natural wine. The proprietor shall record the receipt or return of any volatile fruit-flavor concentrate in the manner required by § 240.915.

§ 240.358 Use of volatile fruit-flavor concentrate in cellar treatment of natural wine.

In the cellar treatment of natural wine, there may be added:

(a) To natural grape or berry wine of the winemaker's own production, volatile fruit-flavor concentrate produced from the same variety of grape or the same kind and variety of berry, or

(b) To natural fruit wine (other than grape or berry) of the winemaker's own production, volatile fruit-flavor concentrate produced from the same kind of fruit, so long as the proportion of the volatile fruit-flavor concentrate to the wine does not exceed the proportion of the volatile fruit-flavor concentrate to the original juice (or must) from which it was produced.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 240.359 Use of juice (or must) from which volatile fruit flavor has been removed.

Juice (or must) or concentrated juice processed at a concentrate plant is deemed to be pure juice (or must) or concentrated juice even though volatile fruit flavor has been removed if, at such concentrate plant or at the bonded wine cellar, there is added to such juice (or must) or concentrated juice, or (in the case of bonded wine cellar) to wine of the winemaker's own production made therefrom, either the identical volatile fruit flavor removed or:

(a) In the case of natural grape or berry wine of the winemaker's own production, an equivalent quantity of volatile fruit-flavor concentrate derived from the same variety of grape or the same kind and variety of berry, or

(b) In the case of natural fruit wine (other than grape or berry wine) of the winemaker's own production, an equivalent quantity of volatile fruit-flavor concentrate derived from the same kind of fruit.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§§ 240.359a and 240.359b [Removed]

Paragraph 4. Sections 240.359a and 240.359b are removed.

Paragraph 5. Section 240.915 is revised. As revised, § 240.915 reads as follows:

§ 240.915 Separate record of materials received and used.

Each proprietor producing wine shall maintain a separate record showing the receipt and use or other disposition of basic winemaking materials, such as fruit, juice or concentrated juice. Where juice (or must) or concentrated juice is received from a concentrate plant, the record shall also show whether the identical volatile fruit flavor has been restored to such juice (or must) or concentrated juice, and further, as to any such concentrated juice, its original density. If volatile fruit-flavor concentrate is received for use in the cellar treatment of natural wine, as authorized in Subpart O of this part, the record shall also show the receipt of such concentrate, a notation regarding any loss in transit or other discrepancy, the fold of such concentrate, the percent of alcohol by volume contained therein, and the use or other disposition of such concentrate. The record must show the date of receipt, the quantity received, the name and address of the person from whom received, and the date of use or other disposition of the materials. The invoices or commercial papers showing the receipt of materials will be retained in chronological order in support of the record. If materials are received off bonded premises and subsequently transferred to the bonded premises, the record will be maintained only with respect to materials received on the bonded premises and will show the date of transfer and quantity transferred, but the invoices or commercial papers covering the purchase of the materials will also be kept available for inspection. Where grapes (or other fruit) received on the bonded premises are used in producing juice to be stored for future use or for removal, the record will show the quantities of grapes used and juice produced. Where fruit or juice is used to produce concentrated juice the record will show the quantity of fruit or juice used and the quantity of concentrated juice produced. The record must also show the use or other disposition of the juice or concentrated juice produced. At the close of each month the materials account will be balanced and the totals reported on Form 5120.17(702).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381 (26 U.S.C. 5367))

Signed: April 26, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: May 13, 1982.

JOHN M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on June 1, 1982, 8:45 a.m., and published in the Federal Register on June 2, 1982, 47 F.R. 23920)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-103

27 CFR Parts 211 and 213

Distribution and Use of Denatured Alcohol and Rum and Distribution and Use of Tax-Free Alcohol

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations in 27 CFR Parts 211 and 213 relating to the requirement for certain dealers and users of denatured spirits and users of tax-free alcohol to make annual application for and receive a withdrawal permit. Under this final rule, these dealers and users would no longer be required to annually reapply for and receive a withdrawal permit. All valid withdrawal permits issued on ATF Forms

1450 (5150.13), 1477 (5150.15), and 1485 (5150.12) will no longer expire on the applicable expiration dates and will continue in effect following the expiration date. New withdrawal permits will not contain an expiration date.

EFFECTIVE DATE: May 25, 1982.

FOR FURTHER INFORMATION CONTACT:

Norman P. Blake or John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

I. Background

On October 23, 1981, ATF published a notice of proposed rulemaking, No. 389, in the Federal Register (46 FR 51929). This notice proposed to recodify 27 CFR Parts 211 and 213 into 27 CFR Parts 20 and 22, respectively. In addition, the notice proposed several modernizing and liberalizing changes and the elimination of many administrative and recordkeeping burdens. One specific proposal was the elimination of the requirement for certain permittees to annually make application for and receive a withdrawal permit. All but one of the comments submitted fully supported the notice and encouraged ATF to expeditiously implement the proposed changes.

Under the provisions of Parts 211 and 213, permittees dealing in or using specially denatured spirits and using tax-free alcohol are required to (1) initially make application for and obtain an industrial use permit, (2) initially make application for and obtain a withdrawal permit, and (3) annually renew the withdrawal permit, except that "limited users" are issued a continuing withdrawal permit. The duration of withdrawal permits issued under Part 211 is the 12 month period from November 1 through October 31, and withdrawal permits issued under Part 213 are issued for the period from May 1 through April 30.

ATF has determined that the requirement for annual renewal of withdrawal permits is unnecessary, and in an effort to reduce administrative burdens on both affected permittees and the Government, this document deletes the requirement for more than 6,300 permittees to annually renew their withdrawal permits issued on Forms 1450 (5150.13), 1477 (5150.15), and 1485 (5150.12), and allows, on a continuing basis, the withdrawal of tax-free alcohol or specially denatured spirits after the expiration date on the form. Elimination of this requirement is consistent with the Departments policy of reducing administrative burdens and paperwork.

While this final rule only addresses the elimination of the requirement to annually renew withdrawal permits, ATF is developing further significant rulemaking changes, based on notice of proposed rulemaking, No. 389, and comments received from the public in response to it.

II. Amendments to Part 211

Part 211 of 27 CFR is amended by:

(a) Removing §§ 211.133 and 211.163, Application for and Renewal of Withdrawal Permit, Form 1477 (5150.15) and 1485 (5150.12), respectively. All valid withdrawal permits for dealers and users of denatured spirits with an expiration date of October 31, 1982 will continue in effect after the expiration date.

(b) Making editorial and conforming changes to §§ 211.22, 211.131, 211.132, 211.161, and 211.162 to reflect the change in duration or renewal of the affected withdrawal permits.

III. Amendments to Part 213

Part 213 of 27 CFR is amended by:

(a) Removing § 213.111, Application for and Renewal of Withdrawal Permit, Form 1450 (5150.13). All valid withdrawal permits for users of tax-free alcohol with an expiration date of April 30, 1983 will continue in effect after the expiration date.

(b) Making editorial and conforming changes to §§ 213.22, 213.109, 213.110 and 213.173 to reflect the change in duration or renewal of the withdrawal permits on Form 1450 (5150.13).

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, published February 17, 1981, in the Federal Register, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, this final regulation is liberalizing in nature and will aid in reducing industry costs, with subsequent benefits to the consumer.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant impact on a substantial number of small entities. This final rule will not have significant secondary or incidental effects on a substantial number of small entities or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

This final rule relieves reporting burdens on a substantial number of small entities which is consistent with the intent of the Act.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact and, in fact, relieves recordkeeping and reporting burdens on a substantial number of small entities.

List of Subjects

27 CFR Part 211

Administrative practice and procedures, Advertising, Alcohol and alcoholic beverages, Authority delegations, Chemicals, Claims, Cosmetics, Excise taxes, Labeling, Packaging and containers, Reporting requirements, Surety bonds, Transportation.

27 CFR Part 213

Administrative practice and procedures, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Reporting requirements, Surety bonds.

Drafting Information

The principal authors of this document are Norman P. Blake and John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Effective Date

Because the Department has determined that continued adherence to the annual renewal requirement is unnecessary and in order to immediately relieve both affected permittees and the Government from the requirements of filing and processing these documents it is impracticable and not in the public interest to issue this

Treasury decision subject to the 30-day effective date limitation in 5 U.S.C. 553(d). Therefore, this Treasury decision is effective on its date of publication in the Federal Register.

Authority and Issuance

This regulation is issued under the authority of 26 U.S.C. 7805 (68A Stat. 917, as amended). Based on the foregoing, Title 27 CFR is amended as follows:

PART 211—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Paragraph 1. The table of sections for Part 211 is amended to reflect (a) the amended heading of § 211.161, and (b) the removal of §§ 211.133 and 211.163. As amended, the table of sections reads as follows:

Sec.

* * * * *

211.133 [Reserved]

* * * * *

211.161 Application for withdrawal permit and limitations on withdrawals.

211.163 [Reserved]

* * * * *

§ 211.22 [Amended]

Par. 2. Section 211.22 is amended by deleting the words "or renewal" from the undesignated paragraph which follows paragraph (a)(3).

§ 211.131 [Amended]

Par. 3. Section 211.131 is amended by deleting (a) the words "during the term of the permit" from the second sentence, and (b) the word "annual" from the third sentence.

Par. 4. Section 211.132 is revised to read as follows:

§ 211.132 Issuance and duration of withdrawal permits.

If the application submitted in accordance with § 211.131 is approved, the regional regulatory administrator shall issue the withdrawal permit on Form 1477 (5150.15) and forward the original to the bonded dealer. Withdrawal permits on Form 1477 (5150.15) shall have the same duration as industrial use permits in accordance with § 211.46.

§ 211.133 [Removed]

Par. 5. Section 211.133 is removed.

Par. 6. Section 211.161 is revised to read as follows:

§ 211.161 Application for withdrawal permit and limitations on withdrawals.

(a) *Application.* A user who desires to obtain specially denatured spirits shall, unless application is filed on Form 4326 (5150.21) as provided in § 211.42a, file an application on Form 1485 (5150.12) with the regional regulatory administrator. The user shall specify in the application:

(1) The formula numbers of the denatured spirits to be withdrawn, listing only those formulas covered by Form 1479-A (5150.19) and formulas which will be used exclusively for laboratory or mechanical purposes as provided in § 211.169.

(2) The estimated average quantity, in gallons of denatured spirits of each formula that will be required in 1 month. The applicant shall specify the quantities and the formulas in accordance with business needs. A user may file applications for more than one withdrawal permit and have withdrawals divided among the permits.

(b) *Limitations on withdrawals.* A user holding a permit on Form 1485 (5150.12) may, during any month and as to each formula specified, withdraw not more than twice the number of gallons specified under paragraph (a)(2) of this section, or 55 gallons (one drum), whichever is larger. Regarding any one formula, the total quantity withdrawn annually may not exceed the number of gallons specified under paragraph (a)(2) of this section for 1 month multiplied by 12 in a calendar year. Withdrawals are futher subject to the following limitations:

(1) A user holding a withdrawal permit on Form 1485 (5150.12) authorizing withdrawals of not more than 120 gallons during a 12-month period, without bond, may not withdraw at one time a quantity which would result in there being more than 12 gallons on hand, in transit, and unaccounted for.

(2) A user (other than a State or political subdivision thereof, or the District of Columbia) holding a withdrawal permit on Form 4327 (5150.11) may not withdraw at one time a quantity which would result in there being more than 7 gallons on hand, in transit, and unaccounted for.

(3) A user who has filed bond, and a State, political subdivision thereof, or the District of Columbia, may not withdraw at one time a quantity which would result in there being on hand, in transit, and unaccounted for a quantity exceeding that stated in the application for permit under § 211.43 and § 211.43a, as applicable.

(c) *Exceptions to limitations.* (1) A user whose business is seasonal in nature, or who has other valid reasons, may request in the application for a withdrawal permit, a larger withdrawal of one or more formulas during a specific calendar month or months. The user may also request that the larger withdrawals be allowed on the basis of an aggregate quantity of two or more formulas combined; if so, the user's request shall be specific as to the amounts desired and the formulas involved.

(2) The user shall furnish sufficient information with the application to enable the regional regulatory administrator to evaluate the request for larger withdrawals.

(3) The limitations in paragraph (b) of this section on total withdrawals during the calendar year and on the quantity which may be on hand, in transit, and unaccounted for at any one time, apply to users granted larger withdrawals under this paragraph.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

Par. 7. Section 211.162 is revised to read as follows:

§ 211.162 Issuance and duration of withdrawal permits.

If the application submitted in accordance with § 211.161 is approved, the regional regulatory administrator shall issue the withdrawal permit on Form 1485 (5150.12) and forward the original to the permittee. If the application submitted in accordance with § 211.42a is approved, the regional regulatory administrator shall issue the limited withdrawal permit on Form 4327 (5150.11) and forward the original to the permittee. Withdrawal permits on Forms 1485 (5150.12) and 4327 (5150.11) shall have the same duration as industrial use permits in accordance with § 211.46.

§ 211.163 [Removed]

Par. 8. Section 211.163 is removed.

§ 211.166 [Amended]

Par. 9. Section 211.166 is amended by revising the last sentence to read as follows: "When space for making entries on withdrawal permit forms is no longer available, separate sheets, as needed, shall be attached to and made part of the form, and entries covering each shipment shall be made on them in the same manner as on the form."

PART 213— DISTRIBUTION AND USE OF TAX FREE ALCOHOL

Par. 10. The table of sections for Part 213 is amended to reflect (a) the amended heading of § 213.109, and (b) the removal of § 213.111. As amended, the table of sections reads as follows:

Sec.

* * * * *

213.109 Application for withdrawal permit and limitations on withdrawals.

* * * * *

213.111 [Reserved]

* * * * *

§ 213.22 [Amended]

Par. 11. Section 213.22 is amended by deleting the words "or renewal" from the undesignated paragraph which follows paragraph (a)(3).

Par. 12. Section 213.109 is revised to read as follows:

§ 213.109 Application for withdrawal permit and limitations on withdrawals.

(a) *Application.* A user who desires to obtain tax-free alcohol shall, unless application is filed on Form 4326 (5150.21) as provided in § 213.41a, file an application on Form 1450 (5150.13) with the regional regulatory administrator. The user shall specify in the application the estimated average quantity, in proof gallons of tax-free alcohol that will be required in 1 month. The applicant shall specify the quantity in accordance with business needs. A user may file applications for more than one withdrawal permit and have withdrawals divided among the permits.

(b) *Limitations on withdrawals.* A user holding a permit on Form 1450 (5150.13) may, during any month, withdraw not more than twice the number of proof gallons specified under paragraph (a) of this section, or 55 wine gallons (one drum), whichever is larger. The total quantity withdrawn annually may not exceed the number of proof gallons specified under paragraph (a) of this section for 1 month multiplied by 12 in a calendar year. Withdrawals are further subject to the following limitations:

(1) A user holding a withdrawal permit on Form 1450 (5150.13) authorizing withdrawals of not more than 240 proof gallons during a 12-month period, without bond, may not withdraw at one time a quantity which would result in there being more than 24 proof gallons on hand, in transit, and unaccounted for.

(2) A user (other than a State or political subdivision thereof, or the District of Columbia) holding a withdrawal permit on Form 4327 (5150.21) may not withdraw at one time a quantity which would result in there being more than 14 proof gallons on hand, in transit, and unaccounted for.

(3) A user who has filed bond, and a State, political subdivision thereof, or the District of Columbia, may not withdraw at one time a quantity which would result in there being on hand, in transit, and unaccounted for a quantity exceeding that stated in the application for permit under § 213.41 and § 213.41a, as applicable.

(c) *Exceptions to limitations.* (1) A user whose business is seasonal in nature, or who has other valid reasons, may request in the application for a withdrawal permit, a larger withdrawal during a specific calendar month or months; if so, the user's request shall be specific as to the amount desired.

(2) The user shall furnish sufficient information with the application to enable the regional regulatory administrator to evaluate the request for larger withdrawals.

(3) The limitations in paragraph (b) of this section on total withdrawals during the calendar year and on the quantity which may be on hand, in transit, and unaccounted for at any one time, apply to users granted larger withdrawals under this paragraph.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

Par. 13. Section 213.110 is revised to read as follows:

§ 213.110 Issuance and duration of withdrawal permits.

If the application submitted in accordance with § 213.109 is approved, the regional regulatory administrator shall issue the withdrawal permit on Form 1450 (5150.13) and forward the original to the permittee. If the application submitted in accordance with § 213.41a is approved, the regional regulatory administrator shall issue the limited withdrawal permit on Form 4327 (5150.21) and forward the original to the permittee. Withdrawal permits on Forms 1450 (5150.13) and 4327 (5150.21) shall have the same duration as industrial use permits in accordance with § 213.45.

§ 213.111 [Removed]

Par. 14. Section 213.111 is removed.

§ 213.114. [Amended]

Par. 15. Section 213.114 is amended by revising the last sentence to read as follows: "When space for making entries on withdrawal permit forms is no longer available, separate sheets, as needed, shall be attached to and made part of the form, and entries covering each shipment shall be made on them in the same manner as on the form."

§ 213.173 [Amended]

Par. 15. Section 213.173 is amended by deleting the words ", together with his renewal application, Form 1450, if any," from the last sentence.

Signed: May 5, 1982.

W. T. DRAKE,
Acting Director.

Approved: May 13, 1982.

JOHN M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

Filed by the Office of the Federal Register on May 21, 1982, 8:45 a.m., and published in the Federal Register on May 25, 1982, 47 F.R. 22522)

TITLE 27 — ALCOHOL, TOBACCO PRODUCTS AND FIREARMS — CHAPTER I — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-100*

27 CFR Parts 240 and 252

Transfer of Wine, Without Payment of Tax, to Customs Bonded Warehouses for Embassy Removals and Other Purposes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: The Treasury Department is adopting as a final rule, a temporary rule which established a procedure whereby wine may be transferred to customs bonded warehouses without payment of tax for the purpose of withdrawal by foreign embassies, legations, etc., as authorized by law. The temporary rule was published on August 5, 1981. No adverse comments were received, therefore this Treasury decision adopts without change, the temporary rule as a final (permanent) rule.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT:
Steven C. Simon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385; (202) 566-7626.

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*See temporary rule T.D. ATF-88, ATFQB 1981-3, 12

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision ATF-88, published on August 5, 1981, (46 FR 39812) promulgated temporary regulations to implement section 2 of Pub. L. 96-601 (Tax Administrative Provisions Revisions). The regulations established a procedure whereby wine may be transferred to customs bonded warehouses without payment of tax for the purpose of withdrawal by foreign embassies, legations, etc., as authorized by law. Concurrently with publication of the temporary rule, public comment was solicited by Notice No. 377 (46 FR 39853, Aug. 5, 1981).

Public Comments

Two public comments were received pertaining to the temporary rule. One of them advocated that foreign governments make it easier for American wine to be sold in their countries. The other was a general statement of support for and approval of the temporary rule.

Executive Order 12291

It has been determined that these regulations are not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because they will not have an annual effect on the economy of $100 million or more; they will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and they will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this rule because the regulations will not have a significant economic impact on a substantial number of small entities. Any economic impact flows directly from Pub. L. 96-601 and not the implementing regulations. The rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from small entities.

Accordingly, the Secretary of the Treasury has certified under the provisions of section 3 of Regulatory Flexibility Act (5 U.S.C. 605(b)) that the regulations will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal drafter of this document is Steven C. Simon of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 240.

Administrative practice and procedure, Claims, Electronic funds transfer, Excise taxes, Exports, Fruit juices, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine, Vinegar.

27 CFR Part 252.

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Liquors, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

This document is issued under the authority contained in 26 U.S.C. 7805. Accordingly, the amendments to 27 CFR Parts 240 and 252 published on August 5, 1981, (46 FR 39812) are hereby established as a final rule without change.

Signed: March 18, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: April 16, 1982.

JOHN M. WALKER, JR.,
Assistant Secretary, Enforcement and Operations.

(Filed by the Office of the Federal Register on May 11, 1982, 8:45 a.m., and published in the Federal Register on May 12, 1982, 47 F.R. 20302

Bureau Rulings PART II

Subpart A—ALCOHOL

27 CFR 4.39(a)(1): PROHIBITED PRACTICES

Wine which has been made from concentrate or which has been ameliorated, sweetened or fortified may not be labeled with the terms "Late Harvest," "Late Picked," "Botrytis Infected," "Pourriture Noble," "Ice Wine," or variations thereof. The required sugar content statements for wine labeled with the above terms need not appear in the same kind of measure. ATF Ruling 78-4 modified.

ATF Rul. 82-4

The Bureau has been asked whether wines which possess the characteristics of "Late Harvest" type wines because they were manufactured from concentrate, ameliorated, sweetened, or fortified may bear the term "Late harvest" or other similar terms on their labels.

ATF Rule. 78-4, 1978 ATF C.B. 61, allowed the use of "Late Harvest" and certain other similar terms on labels of grape wine, provided the amount of sugar contained in the grapes at the time of harvest and the amount of residual sugar in the finished wine were accurately stated in the same kind of measure on a front or back label for the product.

Section 4.39(a)(1) of the regulations implementing section 5(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)), prohibits the use of any statement on a container of wine, or on any label on such a container, which tends to create a misleading impression about the wine product therein. Consumers understand the special properties of "Late Harvest" type wines to be the result of a higher sugar content in the grapes used in the wine. "Late Harvest," or a similar term, would mislead consumers if used on a wine made with methods designed to simulate these properties. Such methods include manufacture from concentrate, amelioration, sweetening and fortification.

On the other hand, the Bureau has reconsidered its position with respect to the "same kind of measure" provision of ATF Rul. 78-4. Winemaking publications show that it is usual and customary in the wine making industry to express the sugar content of the juice in the grapes at harvest in Brix while it is customary to express the residual sugar of the finished wine in terms of percent by weight, grams per 100 ml., etc. ATF regulations and forms also use Brix when referring to sugar content of juice and percent by weight or Brix when referring to sugar content of finished wine.

Held, pursuant to section 4.39 (a)(1), wine which has been made from concentrate or which has been ameliorated, sweetened or fortified may not bear labels containing the terms "Late Harvest," "Late Picked," "Botrytis Infected," "Pourriture Noble," "Ice Wine," or variations thereof.

Held further, the sugar content statements on "Late Harvest," "Late Picked," "Botrytis Infected," "Pourriture Noble," "Ice Wine" (or variations thereof) need not be stated in the same kind of measure.

ATF Rul. 78-4, 1978 ATF C.B. 61, is hereby modified.

27 CFR 19.62: ALTERNATE METHODS OR PROCEDURES; AND EMERGENCY VARIATIONS FROM REQUIREMENTS

(Also 211.22; 240.942; and 245.222)

Proprietors may apply for permission to discontinue the use of certain transfer forms.

ATF RUL. 82-5

The Bureau of Alcohol, Tobacco and Firearms has been asked whether commercial records may be used in lieu of prescribed ATF forms where ethanol-containing products are transferred in a nontaxpaid status to consignees who are qualified to receive them.

Under the following ATF regulations, proprietors of distilled spirits plants, bonded wine cellars or bonded wineries, dealers in specially denatured alcohol, and brewers must submit prescribed forms in order to transfer their products in a nontaxpaid status.

1. Section 19.508, 27 C.F.R. pertaining to distilled spirits (ATF Form 236 (5110.27) required);
2. Section 240.613, 27 C.F.R. pertaining to wine (ATF Form 703 (5120.23) required);
3. Section 240.828, 27 C.F.R. pertaining to wine spirits (ATF Form 2629 (5110.26) required);
4. Section 211.148, 27 C.F.R. pertaining to specially denatured alcohol (ATF Form 1473 (5110.16) required);
5. Section 245.145, 27 C.F.R. pertaining to beer (ATF Form 2035 required).

The following regulations authorize the Director to approve alternate methods or procedures in lieu of those otherwise prescribed provided that good cause is shown for the use of the alternate method, that the method is consistent with the purpose of the regulation and affords equivalent security to the revenue, and that the method will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder effective administration of the regulations pertaining to the applicable class of products.

1. Section 19.62, 27 C.F.R. for proprietors of distilled spirits plants; and
2. Section 211.22, 27 C.F.R. for dealers in specially denatured alcohol.

Additionally, section 19.744 provides that distilled spirits plant proprietors may modify certain prescribed forms or maintain substitute records in lieu thereof upon the filing of notice to the Director. Such modified forms or substitute records must contain the information which would have been on the prescribed form or record.

As far as proprietors of bonded wine cellars or bonded wineries are concerned, section 240.941, 27 C.F.R. provides that the Director may approve methods of operations other than those prescribed in Part 240 where it is shown that the variation is necessary, will not hinder effective administration of Part 240, will not jeopardize the revenue, and is not contrary to any provision of law. As far as brewers are concerned, section 245.221, 27 C.F.R. provides that the Director may approve methods in lieu of those specified in Part 245 where it is shown that it is impractical to conform to the prescribed specifications and where the methods will afford the security and protection to the revenue intended by the prescribed specifications, will not hinder effective administration of Part 245, and will not be contrary to any provision of law.

Proprietors who transfer products upon submission of one of the forms set forth above typically maintain commercial records regarding the transfer which contain all the information required to be set forth on the applicable form. Accordingly, to require proprietors to submit a form which contains no more information than already exists in their records imposes an unnecessary burden upon them. In effect, they are required to simply duplicate their records.

Held, proprietors of distilled spirits plants (pursuant to 27 C.F.R. §§ 19.62 and 19.744), proprietors of bonded wine cellars or bonded wineries (pursuant to 27 C.F.R. § 240.942), dealers in specially denatured alcohol (pursuant to 27 C.F.R. § 211.22), and brewers (pursuant to 27 C.F.R. § 245.222) may submit applications requesting to use commercial records in lieu of the transfer forms enumerated herein. Such applications will be approved if the proprietor maintains commercial records which reflect the same information called for by the particular form and if the application satisfies the requirements of the particular provision under which the application is made.

27 CFR 170.304: CIRCUMSTANCES UNDER WHICH PAYMENT MAY BE MADE.

(Also 27 CFR 170.307)

ATF explains the operation of the clause "indemnified by any valid claim of insurance or otherwise", in connection with Government allowance of claims filed under 26 U.S.C. 5064.

ATF Rul. 82–6

The Bureau of Alcohol, Tobacco and Firearms has been requested to explain the meaning of the clause "indemnified by any valid claim of insurance or otherwise" set forth in 26 U.S.C. 5064.

Section 5064 provides that under certain conditions, the Secretary shall pay to the owner of distilled spirits, wines, or beer an amount of money equal to the Internal Revenue taxes and customs duties paid on such products if they are lost as a result of disaster, vandalism or malicious mischief.

One of the conditions governing such payment is that the claimant must not have been "indemnified by any valid claim of insurance or otherwise" with respect to the tax, or tax and duty, on the distilled spirits, wines, or beer covered by the claim (26 U.S.C. 5064(b)(1)(B)(i)). The phrase "indemnified by any valid claim of insurance or otherwise" also appears in 27 CFR 170.304 and 170.307, regulations promulgated under section 5064. ATF has taken the position in Industry Circular 79-18 that "indemnified" in this case means "secured against loss." This includes not only the owner's insurance, but indemnification from any source; most commonly, a common carrier.

When a claimant is indemnified for the *total amount* of lost tax and duty, 26 U.S.C. 5064 does not provide for payment to cover any portion of such lost tax and duty. The owner has been "indemnified by a valid claim of insurance or otherwise."

A different situation exists if the loss of tax and duty is *not* totally covered by an insurance policy or a shipping contract. If the amount of coverage is insufficient to cover the total amount of tax and duty lost, Section 5064 permits approval of a claim only for the difference between the total amount of tax and duty lost and the amount of tax and duty covered under an insurance policy or a shipping contract. The reason for the insufficient coverage is immaterial, as long as the coverage is insufficient in accordance with the terms of the policy or contract. The terms of the policy or contract determine the amount of coverage.

Insurance companies or common carriers that deny payment for lost tax and duty solely on the ground that the provisions of section 5064 requires such payment are advised that the terms of an insurance policy or shipping contract establish whether the owner is indemnified.

Similarly, the owner of damaged or lost alcoholic beverages who simply reduces insurance coverage in anticipation of reimbursement under section 5064 of an amount of money equal to the tax and duty on damaged or lost merchandise, without changing the terms of the insurance policy to exclude coverage for tax and duty, is cautioned that the terms of the insurance policy will establish whether the owner is indemnified.

The following example illustrates the operation of the indemnity clause of section 5064 when the owner of alcoholic beverages is partially indemnified for lost tax and duty:

> Assume a claimant were to suffer a loss of goods and property worth $80,000 in a fire, with $10,000 of the loss attributable to the tax and duty on alcoholic beverages rendered unsalable by the fire. The $80,000 loss includes alcoholic beverages, building, fixtures, and other personal property. If tax and duty on alcoholic beverages is covered under the terms of the policy, the provisions of section 5064 contemplate allocation of one-eighth ($10,000 is one-eighth of $80,000) of the total reimbursement under the policy for tax and duty and permits allowance of a claim only for the difference between the total amount of tax and duty lost and the insurance payment for tax and duty. Assuming further that the insurance company reimburses (for whatever reason, but according to the terms of the policy) a total amount of $56,000, a claimant is indemnified for tax and duty in the amount of $7,000 (one-eighth of $56,000) and payment under section 5064 will be limited to $3,000 – the difference between the total amount of tax and duty lost ($10,000) and the pro rata amount which the claimant was paid under the terms of the policy ($7,000). Of course, if – under the terms of the policy – the insurance company was not liable for any tax and duty on alcoholic beverages, the provisions of section 5064 would permit allowance of a claim for the full $10,000 tax and duty.

The same principles apply where alcoholic beverages are lost or destroyed while in transit and the common carrier agreement provides indemnification (in full or in part) for the goods being conveyed.

Held, the indemnity provisions of section 5064 provide for the payment of claims for lost tax and duty only to the extent that the claimant was not secured against such loss by insurance or otherwise. Where a claimant is indemnified for a portion of lost tax and duty, the amount of tax and duty allowable under section 5064 must be determined on a pro rata basis, as set out above.

27 CFR 170.307: CLAIMANT TO FURNISH PROOF

The operation of the indemnity provisions of 26 U.S.C. 5064 are explained in ATF Ruling 82-6, above.

27 CFR 197.95: PRODUCTS REQUIRING FORMULAS.

Laboratory stains or reagents intended to be used for medical diagnostic purposes are medicines, and quantitative formulas describing their manufacture will be approved if the stains or reagents are unfit for beverage use. See ATF Ruling 82-7, below.

27 CFR 197.105: DRAWBACK

(Also 197.95)

Laboratory stains or reagents are medicines, for the purpose of nonbeverage drawback, if such stains or reagents are to be used for medical diagnostic purposes.

ATF Rul. 82–7

The Bureau of Alcohol, Tobacco and Firearms has been asked whether distilled spirits are eligible for drawback of tax under 26 U.S.C. 5131 if the spirits are used to manufacture laboratory stains or reagents intended to be used for medical diagnostic purposes.

Section 5131(a) of Title 26 U.S.C. provides that "Any person using distilled spirits on which the tax has been determined, in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes, on payment of a special tax per annum, shall be eligible for drawback at the time when such distilled spirits are used in the manufacture of such products as provided for in this subpart."

The conditions governing approval of nonbeverage drawback claims are, for the most part, repeated in the regulations at 27 CFR 197.105.

The Federal Food, Drug and Cosmetic Act states, in part, that a drug is an article intended for use in the diagnosis of disease in man or other animals (21 U.S.C. 321(g)(1)(B)).

Held, a laboratory stain or reagent which is to be used in medical diagnostic procedures is a medicine. A manufacturer who intends to file a nonbeverage drawback claim (under the provisions of 26 U.S.C. 5131-5134) to recover the tax on spirits used in the manufacture of such laboratory stains or reagents must obtain approval of a quantitative formula describing the manufacture of the product (27 CFR 197.95). A condition to approval of such formulas is that the manufactured product must be unfit for beverage use.

27 CFR 211.22: ALTERNATE METHODS OR PROCEDURES; AND EMERGENCY VARIATIONS FROM REQUIREMENTS

Proprietors may apply for permission to use commercial records in lieu of certain transfer forms. See ATF Rul. 82-5, page 44.

27 CFR 240.942: APPLICATION

Proprietors may apply for permission to use commercial records in lieu of certain transfer forms. See ATF Rul. 82-5, page 44.

27 CFR 245.222: APPLICATION

Proprietors may apply for permission to use commercial records in lieu of certain transfer forms. See ATF Rul. 82-5, page 44.

27 CFR 252.30: EXPORT STATUS

Nontaxpaid domestic alcoholic beverages may not be transferred to a foreign-trade zone for the purpose of subsequent withdrawal of the beverages to the Customs territory of the United States.

ATF Rul. 82–9

The Bureau of Alcohol, Tobacco and Firearms (ATF) has been asked whether distilled spirits may be withdrawn from the bonded premises of a distilled spirits plant without payment of tax and transferred to a foreign-trade zone for the purpose of subsequent withdrawal of the beverages, upon payment of applicable excise taxes, to the Customs territory of the United States.

Section 5214(a)(8), of the Internal Revenue Code of 1954, as amended, provides, in part, that "Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to such regulations as the Secretary shall prescribe, be withdrawn from the bonded premises of any distilled spirits plant in approved containers. . .without payment of tax for transfer to foreign-trade zones, *as authorized by law*. . ." (emphasis supplied).

The phrase "as authorized by law" refers to the Foreign-Trade Zones Act (19 U.S.C. 81c). Thus, ATF's response to the question is based not only on ATF's interpretation of the provisions of the Internal Revenue Code, but also on ATF's interpretation of the provisions of the Foreign-Trade Zones Act.

The introductory sentence of Section 3 of the Foreign-Trade Zones Act states, in part, that "Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the Customs laws of the United States, *except as otherwise provided in this Act*, be brought into a zone and may be stored,. . .and. . .sent into Customs territory of the United States therefrom, in the original package or otherwise;. . ." (emphasis supplied).

The fourth proviso of the Act provides, in part, that articles taken into a zone from Customs territory for the sole purpose of exportation or storage are considered to be exported for the purpose of gaining exemption from liability for Internal Revenue taxes.

The benefits of the fourth proviso (such as the right to transfer the article to a foreign-trade zone and thereby gain exemption from liability for Internal Revenue taxes) are not operative if articles are taken into a zone with the intent of eventual reentry into Customs territory. (S. Rep. No. 1107 81st Cong., 2d Sess. reprinted in (1950) U.S. Code Cong. Service 2533, 2537.)

The position of the Customs Service is in accord. Customs has held that under the Foreign-Trade Zones Act, articles, the growth, product or manufacture of the United States, subject to internal revenue taxes, and on which all internal revenue taxes have not been paid, may not be properly admitted into a foreign-trade zone in any status other than zone- restricted. That is, in the opinion of the Customs Service, the Foreign-Trade Zones Act does not authorize the operation at issue.

Thus, if nontaxpaid distilled spirits are transferred to a foreign-trade zone for a purpose other than exportation or storage pending exportation, excise tax liability on the beverages arises commencing with the date that such beverages are removed from bonded premises. If such tax liability is not timely paid, interest and penalty with respect to the unpaid taxes would arise under applicable statutory provisions.

Moreover, the fifth proviso of the Foreign-Trade Zones Act prohibits any operation in a foreign-trade zone which would be subject to the provisions of Chapter 51 of the Internal Revenue Code of 1954, if performed in Customs territory, unless such operation was permissible under the Act prior to July 1, 1949.

The storage of untaxpaid distilled spirits intended for consumption in the Customs territory of the United States is an operation subject to Chapter 51 of the Code. This operation was not permissible in a foreign-trade zone prior to July 1, 1949. Accordingly, such operation is precluded by the fifth proviso of the Act.

Held, distilled spirits may not be withdrawn from the bonded premises of a distilled spirits plant without payment of tax and transferred to a foreign-trade zone for the purpose of subsequent withdrawal of the beverages (even if taxpaid upon removal) to the Customs territory of the United States.

Subpart C—FIREARMS

27 C.F.R. 179.11: MEANING OF TERMS

The SM10 and SM11A1 pistols and SAC carbines are machineguns as defined in the National Firearms Act.

ATF Rul. 82-8

The Bureau of Alcohol, Tobacco and Firearms has reexamined firearms identified as SM10 pistols, SM11A1 pistols, and SAC carbines. The SM10 is a 9 millimeter or .45ACP caliber, semiautomatic firearm; the SM11A1 is a .380ACP caliber, semiautomatic firearm; and the SAC carbine is a 9 millimeter or .45ACP caliber, semiautomatic firearm. The weapons are blowback operated, fire from the open bolt position with the bolt incorporating a fixed firing pin, and the barrels of the pistols are threaded to accept a silencer. In addition, component parts of the weapons are a disconnector and a trip which prevent more than one shot being fired with a single function of the trigger.

The disconnector and trip are designed in the SM10 and SM11A1 pistols and in the SAC carbine (firearms) in such a way that a simple modification to them, such as cutting, filing, or grinding, allows the firearms to operate automatically. Thus, this simple modification to the disconnector or trip, together with the configuration of the above design features (blowback operating, firing from the open bolt position, and fixed firing pin) in the SM10 and SM11A1 pistols and in the SAC carbine, permits the firearms to shoot automatically, more than one shot, without manual reloading, by a single function of the trigger. The above combination of design features as employed in the SM10 and SM11A1 pistols and SAC carbine are normally not found in typical sporting firearms.

The National Firearms Act, 26 U.S.C. § 5845(b), defines a machinegun to include any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

The "shoots automatically" definition covers weapons that will function automatically. The "readily restorable" definition defines weapons which previously could shoot automatically but will not in their present condition. The "designed" definition includes those weapons which have not previously functioned as machineguns but possess design features which facilitate full automatic fire by a simple modification or elimination of existing component parts.

Held: The SM10 and SM11A1 pistols and the SAC carbine are designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. Consequently, the SM10 and SM11A1 pistols and SAC carbines are machineguns as defined in Section 5845(b) of the Act.

With respect to the machinegun classification of the SM10 and SM11A1 pistols and SAC carbines, under the National Firearms Act, pursuant to 26 U.S.C. § 7805(b), this ruling will not be applied to SM10 and SM11A1 pistols and SAC carbines manufactured or assembled before June 21, 1982. Accordingly, SM10 and SM11A1 pistols and SAC carbines, manufactured or assembled on or after June 21, 1982, will be subject to all the provisions of the National Firearms Act and 27 C.F.R. Part 179.

Announcements PART VI

Announcement 82–15

Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected, as identified by the Administrator, Federal Emergency Management Agency (FEMA), are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

Date Disaster Areas Identified by FEMA	*Affected Areas*	*Type of Disaster*
April 8, 1982	TEXAS County of: Lamar	Severe storms and tornadoes beginning on or about April 2, 1982
April 24, 1982	CALIFORNIA County of: Orange (city of Anaheim)	Fires beginning on or about April 21, 1982
May 25, 1982	TEXAS County of: Wichita	Severe storms and flooding beginning on or about May 12, 1982
June 5, 1982	ILLINOIS Counties of: Williamson and Perry	Severe storms and tornadoes beginning on or about May 29, 1982
June 14, 1982	CONNECTICUT Counties of: Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, Windham,	Severe storms and flooding beginning on or about June 4, 1982

Announcement 82–16

Statistical tabulation of firearms manufactured in the United States and firearms exported during the first quarter of Fiscal Year 1982

The following statistics represent the number of firearms manufactured in the United States during the First Quarter (1 October through 31 December 1981) and the number of those firearms which were subsequently exported. The figures were compiled from Forms 4483-A submitted by federally licensed manufacturers of firearms.

The figures do not include firearms that were manufactured for use by the Armed Forces of the United States. Also, only those weapons that are "firearms" as that term is defined in Titles I and II of Public Law 90-618, the Gun Control Act of 1968, are included in the tabulation.

Type of Firearm Produced	*Total Production*
Pistols	212,527
Revolvers	471,082
Rifles	430,228
Shotguns and Comb. Guns	177,775
Machineguns	11,547
Any Other Weapon	237

Type of Firearm Exported	*Quantity*
Pistols	6,024
Revolvers	44,434
Rifles	27,293
Shotguns and Comb. Guns	42,835
Machineguns	551
Any Other Weapon	0

Announcement 82–17

Offer in Compromise

ATF has accepted an offer in compromise of $20,000 from Barton Brands, Ltd., Chicago, Illinois, for violations of 26 U.S.C. 5114(a) and 27 U.S.C. 205(b)(3), (b)(4) and (c)(2). The proponent failed to maintain accurate distilled spirits records, and directly and indirectly furnished inducements to retailers and trade buyers to purchase its products to the exclusion, in whole or in part, of competing products sold or offered for sale in interstate commerce.

Announcement 82–18

Offer in Compromise

ATF has accepted an offer in compromise of $15,000 from Paradise Beverage, Inc., d/b/a Paradise Beverages, Honolulu, Hawaii. The proponent violated 26 U.S.C. 5001(a) by importing sake containing distilled spirits and improperly taxpaying such sake at the malt beverage tax rate instead of the distilled spirits tax rate.

Announcement 82–19

Offer in Compromise

ATF has found three retail liquor dealer establishments in Sacramento, California, in violation of 26 U.S.C. 5301(c)(2). Each retailer had in its possession liquor bottles of which the contents had been altered and/or refilled. ATF accepted in compromise, $50 for each bottle found in the retailers' possessions. The establishments and offers in compromise accepted were: (1) Harvey N. Stroh, dba Neptune's Table, $200, (2) Claire D. Brown, dba Gas Lamp, $650, and (3) Galactica Corporation, dba Galactia 2000, $300.

Announcement 82–20

Offer in Compromise

ATF has accepted $100 from Robert L. Hutchcock, Inc., dba The Oak Room, Fair Oaks, California. The proponent was found in violation of 26 U.S.C. 5301(c)(2) by having in its possession two liquor bottles of which the contents had been altered and/or refilled.

Announcement 82–21

Revocation of SDA Permit

The SDA permit held by The Jim Spencer Company, Los Angeles, California, has been revoked by ATF in accordance with 26 U.S.C. 5271(e). The permittee failed to engage in the operations authorized by its permit for a period of more than two years.

Announcement 82-22

Revocation of Importer Permits

ATF has revoked two importer permits in accordance with 27 U.S.C. 204(e) of the FAA Act. The permittees, (1) Thomas Gary Casazza, dba A. Casazza & Co., San Francisco, California and (2) A.S.S.T. Corporation, San Francisco, California, failed to engage in the operations authorized by their permits for a period of more than two years.

Announcement 82-23

Revocation of Wholesaler Permits

Three permittees have had their wholesaler basic permits revoked by ATF in accordance with 27 U.S.C. 204(e) of the FAA Act. Each permittee failed to engage in the operations authorized by their permits for a period of more than two years. The proponents are: (1) Robert C. Leppek, dba Leppek Wine Distributing Co., Bakersfield, California, (2) Acme Distributing of Ketchum, Ketchum, Idaho, and (3) California Wine Exporters, Inc., Richmond, California.

Announcement 81-24

Semiannual Agenda of Regulations

ATF published a notice in the Federal Register of April 29, 1982, the Semiannual Agenda of Regulations. This notice concerns the Regulatory Improvement Implementation Program which implements Executive Order 12291. The required semiannual agenda is designed to give the public adequate notice of ATF regulatory activities which will be under development and review during the period April 15, 1982 through October 15, 1982. Information concerning specific items appearing in the following semiannual agenda should be directed to the appropriate contact person indicated. The next semiannual agenda will be published in the Federal Register for October 15, 1982.

PART I—REGULATIONS UNDER DEVELOPMENT AND CONSIDERATION

TITLE/CITATION	SUMMARY
ALCOHOL	
375-ml Container for Distilled Spirits (RFA) 27 CFR Part 5	*Description:* To provide for the bottling of distilled spirits in the proposed size; if adopted, will raise the total of authorized standards of fill to eight. (Rev.) Responds to a petition requesting the adoption of this size. *Legal basis:* 26 U.S.C. 5301, 27 U.S.C. 205. *Status:* Under development. *Priority:* C. *Contact:* Roger Bowling. *Analysis:* None anticipated under the RFA.

TITLE/CITATION	SUMMARY
Multi-vintage Dates and Percentages for Wine under the FAA Act (RFA) 27 CFR Part 4	*Description:* To provide for the labeling and advertising of vintage dates and the percentages of each vintage, which have been used to make a blended wine. Responds to a petition. *Legal basis:* 27 U.S.C. 205. *Status:* Under consideration (NPRM published August 5, 1981 (46 FR 39849); comment period ended November 3, 1981); final action scheduled for the summer of 1982. *Priority:* C. *Contact:* Roger Bowling. *Analysis:* None anticipated under the RFA.
Vintage Wine 27 CFR Part 4	*Description:* To extend the eligibility for vintage labeling to Class 5, fruit wines. Responds to a petition. *Legal basis:* 27 U.S.C. 205. *Status:* Under consideration (NPRM published November 5, 1981 (46 FR 54963); comment period closed February 3, 1982); final action scheduled for the fall of 1982. *Priority:* C. *Contact:* Joan Deerwester.
Vodka Additions (RFA) 27 CFR Part 5	*Description:* To clarify the standard of identity for vodka or the addition of another class and type of vodka. Responds to results of recent tests conducted by the ATF Laboratory and to concerns of the industry. *Legal basis:* 27 U.S.C. 205. *Status:* Under consideration (ANPRM published January 11, 1982 (47 FR 1148); comment period closed April 12, 1982); NPRM scheduled for the fall of 1982. *Priority:* C. *Contact:* Joan Deerwester. *Analysis:* None anticipated under the RFA.
Foreign Appellations of Origin (RFA) 27 CFR Parts 4 and 12	*Description:* To update names of geographical and viticultural significance; to provide for the recognition of all foreign appellations of origin recognized by ATF for use on labels of imported wine. Augments existing regulations by providing a centralized source of information concerning foreign appellations of origin. *Legal basis:* 27 U.S.C. 205. *Status:* Alternatives to a substantive rule are being considered.

TITLE/CITATION	SUMMARY
	Priority: C. *Contact:* Roger Bowling or Norman Blake. *Analysis:* None anticipated under the RFA.
Implementation of the Distilled Spirits Tax Revision Act of 1979 27 CFR Parts 5, 13, 19, 170, 173, 194, 195, 196, 197, 200, 211, 212, 213, 231, 240, 250, 251, and 252	*Description:* To eliminate the wine gallon method for imposing the distilled spirits tax and the rectification tax; to convert DSP's from the former distilled spirits tax system to an all-in-bond tax system; and to adopt other amendments from prior projects. Imposed by statute. *Legal basis:* 26 U.S.C. Chapter 51, as amended. *Status:* Under consideration (T.D. with N. published December 11, 1979 (44 FR 71612, 44 FR 71613); comment period ended December 1, 1980); T.D. targeted for publication in the FR in the spring of 1982. *Priority:* A. *Contact:* Edward Sheehan or Jim Whitley.
Reporting Taxes Due to the Governments of Puerto Rico and the Virgin Islands 27 CFR Part 19	*Description:* To change the reporting requirements for most Puerto Rican and Virgin Islands spirits bottled at domestic DSP's from the point these spirits enter the processing account to the point of tax determination; to require active coordination with the insular governments and with other Federal agencies involved with the transfer of tax revenues. *Legal basis:* 26 U.S.C. 5555, 26 U.S.C. 5207. *Status:* Under development. *Priority:* A. *Contact:* Richard Mascolo.
Grape Brandy (RFA) 27 CFR Part 5	*Description:* To consider a standard of identity for "varietal grape brandy," "vintage grape brandy," and designations for grape brandy viticultural areas. Responds to a petition. *Legal basis:* 27 U.S.C. 205. *Status:* Under consideration (NPRM and ANPRM published November 19, 1981 (46 FR 56824); comment period closed February 17, 1982). *Priority:* A. *Contact:* James Hunt. *Analysis:* None anticipated under the RFA.
Implementation of Pub. L. 96-598 (RFA) 27 CFR Parts 5, 13, 19, 197, 250, 251 and 252	*Description:* To restore the tax system which existed for distilled spirits containing wine or alcoholic flavoring materials prior to the enactment of the Distilled Spirits Tax Revision Act of 1979; to permit spirits bottled for in-

TITLE/CITATION	SUMMARY
	dustrial purposes to be transferred in bond between DSP's. Imposed by statute. *Legal basis:* 26 U.S.C. 5010. *Status:* Under development. T.D. with N. targeted for publication in the FR in the spring of 1982. *Analysis:* None anticipated under the RFA. *Priority:* A. *Contact:* John Linthicum.
Credit to Retailers in Arrears 27 CFR Part 6	*Description:* To consider what approach to take regarding repayment of indebtedness where producers and wholesalers have extended credit to retail liquor dealers in excess of the usual and customary credit period of 30 days. Revenue Ruling 54-162 does not adequately address the "tied-house" relationship between wholesalers/producers and retail liquor dealers. *Legal basis:* 27 U.S.C. 205. *Status:* This project is being studied by the ATF Legislative Committee. *Priority:* A. *Contact:* Charles Bacon.
Transfer of Wine to Customs Bonded Warehouses (RFA) 27 CFR Parts 240 and 252	*Description:* To implement Pub. L. 96-601 which permits withdrawal of wine without payment of tax from bonded wine cellars for transfer to customs bonded warehouses, and subsequent tax-free withdrawal, by foreign embassies, of wine so transferred. *Legal basis:* 26 U.S.C. 5362. *Status:* Under consideration (T.D. with N. published August 5, 1981 (46 FR 39812, 39853); retroactively effective April 1, 1981); final action scheduled for the spring of 1982. *Priority:* A. *Contact:* Steve Simon. *Analysis:* None anticipated under the RFA.
Geographic Brand Names (RFA) 27 CFR Part 4	*Description:* To extend the mandatory compliance date of January 1, 1983, to January 1, 1985, for the use of brand names that have geographical significance in relation to wines (*e.g.*, viticultural areas). Responds to a petition from the Wine Institute. *Legal basis:* 27 U.S.C. 205. *Status:* Under development. *Priority:* B.

TITLE/CITATION	SUMMARY
	Contact: Roger Bowling. *Analysis:* None anticipated under the RFA.
100-ml Container for Distilled Spirits (RFA) 27 CFR 19.632 and Part 5	*Description:* To allow distilled spirits bottlers to bottle distilled spirits in a 100-ml (3.4-fl. oz.) container for use in interstate and foreign commerce. Responds to a petition. *Legal basis:* 26 U.S.C. 5301; 27 U.S.C. 205. *Status:* Under consideration (T.D. with N. published June 19, 1981 (46 FR 32224); comment period ended September 17, 1981); final action scheduled for the summer of 1982. *Priority:* A. *Contact:* Charles Bacon. *Analysis:* None anticipated under the RFA.
Proposed Viticultural Areas (RFA) 27 CFR Part 9	*Description:* To establish American viticultural areas for purposes of labeling and advertising wine. Responds to petitions. *Legal basis:* 27 U.S.C. 205. *Status and Contact:* Refer to the following list of petitioned American viticultural areas.
Under Consideration (Treasury Decisions):	
Central Delaware Valley, PA and NJ	NPRM published in the FR on December 4, 1981 (46 FR 59276); comment period closed March 4, 1982; final action scheduled for the autumn of 1982. (Steve Simon.)
Cienega Valley, CA	NPRM published in the FR on July 28, 1981 (46 FR 38536); comment period ended October 26, 1981; final action scheduled for the summer of 1982. (Robert White.)
Cole Ranch, CA	NPRM published in the FR on December 4, 1981 (46 FR 59273); comment period ended March 4, 1982; final action scheduled for the autumn of 1982. (Joan Deerwester.)
Edna Valley, CA	NPRM published in the FR on April 9, 1981 (46 FR 21195); final action scheduled for the spring of 1982. (Robert White.)
Finger Lakes, NY	Amended NPRM published in the FR on October 7, 1981 (46 FR 49597); comment period ended November 23, 1981; final action scheduled for the summer of 1982. (Norman Blake.)
Green Valley of Solano, CA	NPRM published in the FR on January 11, 1982 (47 FR 1149); comment period ended March 12, 1982; final action scheduled for the autumn of 1982. (Robert White.)

TITLE/CITATION	SUMMARY
Hudson River, NY	NPRM published in the FR on October 21, 1981 (46 FR 51619); comment period ended January 19, 1982; final action scheduled for the summer of 1982. (John Linthicum.)
Isle St. George, OH	NPRM published in the FR on February 3, 1982 (47 FR 5011); comment period ended March 5, 1982; final action scheduled for the summer of 1982. (Charles Bacon.)
Lancaster Valley, PA	NPRM published in the FR on August 28, 1981 (46 FR 43468); comment period ended November 25, 1981; final action scheduled for the spring of 1982. (Charles Bacon.)
Leelanau Peninsula, MI	NPRM published in the FR on August 5, 1981 (46 FR 39852); comment period ended November 3, 1981; final action scheduled for the spring of 1982. (Norman Blake.)
Livermore Valley, CA	NPRM published in the FR on October 30, 1981 (46 FR 53688); comment period ended January 28, 1982; final action scheduled for the fall of 1982. (Robert White.)
Los Carneros, CA	NPRM published in the FR on December 15, 1980 (45 FR 82470); comment period ended February 13, 1981; final action scheduled for the summer of 1982. (Steve Simon.)
Madera, CA	NPRM published in the FR on January 26, 1982 (46 FR 3564); comment period ended March 12, 1982; final action scheduled for the summer of 1982. (Norman Blake.)
Monticello, VA	NPRM published in the FR on December 4, 1981 (46 FR 59274); comment period ended March 4, 1982; final action scheduled for the autumn of 1982. (Joan Deerwester.)
North Coast, CA	NPRM published in FR on January 11, 1982 (47 FR 1151); comment period ended March 12, 1982; final action scheduled for the summer of 1982. (Richard Mascolo.)
Paicines, CA	NPRM published in the FR on August 6, 1981 (46 FR 40045); comment period ended November 4, 1981; final action scheduled for the summer of 1982. (Robert White.)
The Pinnacles (Chalone), CA	Amended NPRM published in the FR on October 7, 1981 (46 FR 49600); comment period ended November 23, 1981; final action scheduled for the summer of 1982. (Norman Blake.)
Rocky Knob, VA	NPRM published in the FR on November 19, 1981 (46 FR 56828); comment period ended February 17, 1982; final action scheduled for the spring of 1982 (James Hunt.)

TITLE/CITATION	SUMMARY
Shenandoah Valley, CA	Notice of hearings published in the FR on October 30, 1981 (46 FR 53691); hearings held on December 7 and 8, 1981, and on January 12 and 13, 1982; final action scheduled for the summer of 1982. (Richard Mascolo.)
Suisun Valley, CA	NPRM published in the FR on January 11, 1982 (47 FR 1153); comment period ended March 12, 1982; final action scheduled for the autumn of 1982. (Robert White.)

Under Development (Petitions Received and NPRM's):

Alexander Valley, CA	(Jim Whitley.)
Arroyo Seco, CA	(Charles Bacon.)
Carmel Valley, CA	(John Linthicum.)
Catoctin, MD	(Jim Whitley.)
Chalk Hill, CA	(Joan Deerwester.)
Dry Creek Valley, CA	(Jim Whitley.)
El Dorado, CA	(Joan Deerwester.)
Green Valley of Sonoma, CA	(Robert White.)
King City, CA	(Charles Bacon.)
Knights Valley, CA	(Jim Whitley.)
Lime Kiln Valley, CA	(Roger Bowling.)
Linganore Valley, MD	(Jim Whitley.)
Loramie Creek, OH	(Edward Sheehan.)
Musconetcong Valley, NJ	(Steve Simon.)
North Fork of the Roanoke, VA	(James Hunt.)
Russian River Valley, CA	(James Hunt.)
San Lucas, CA	(Charles Bacon.)
Santa Ynez Valley, CA	(Charles Bacon.)
Shenandoah Valley, VA	(Richard Mascolo.)
Temecula, Murrieta, and Rancho California, CA	(John Linthicum).

Priority: A.

Analysis: None anticipated under the RFA.

PROCEDURES & PRACTICES

Electronic Fund Transfers of Alcohol and Tobacco Products Excise Taxpayments 27 CFR Parts 19, 70, 170, 240, 245, 270, and 275 (26 CFR Parts 301 and 601)	*Description:* To require that certain taxpayers make their taxpayments by electronic fund transfers directly to financial institutions. Ensures maximum cash flow through the most efficient and cost-effective method of collecting excise taxes as close as possible to the time when taxes are due. *Legal basis:* 26 U.S.C. 5061(a), 5703(b), and 7805. *Status:* Actual notice was sent to affected taxpayers, stating that the application of the EFT regulations is suspended until further notice. *Priority:* A. *Contact:* Armida Stickney. *Analyses:* Draft and final regulatory analyses were prepared under E.O. 12044.

TITLE/CITATION	SUMMARY
ATF Procedural Rules 27 CFR Parts 70 and 71 (26 CFR Parts 301 and 601)	*Description:* To incorporate all of the ATF procedural requirements which appear in the Internal Revenue Service regulations, 26 CFR Parts 301 and 601, into 27 CFR Parts 70 and 71. Eliminates confusion and places all of the ATF procedural regulations into Title 27: Alcohol, Tobacco Products and Firearms. *Legal basis:* 26 U.S.C. 7805. *Status:* Being held in abeyance due to pending reorganization. *Priority:* C. *Contact:* Steve Simon.
Disclosure of Tax Return Information 27 CFR Part 71	*Description:* To implement Title XII of Pub. L. 94-455, relating to disclosure of tax return information. Imposed by statute. *Legal basis:* 26 U.S.C. 6103, as amended. *Status:* Being held in abeyance due to pending reorganization. *Priority:* C. *Contact:* Armida Stickney.
Incorporation by Reference 27 CFR Chapter I	*Description:* To implement publication procedures on "incorporations by reference," as required by 1 CFR Part 51. ("Incorporation by reference" is material considered as published in the FR by a citation of that material which has been published elsewhere and which has the legal status afforded by 5 U.S.C. 552(a).) Identifies clearly materials incorporated by reference and makes the regulations more responsive to the public by letting them know where to acquire materials they will need in order to comply with the regulations. *Legal basis:* 5 U.S.C. 552(a). *Status:* T.D. ATF-92 published on September 23, 1981 (46 FR 46910); effective September 23, 1981. *Priority:* B. *Contact:* Armida Stickney.
Paperwork Reduction Act of 1980 (Pub. L. 96-511) 27 CFR Chapter I	*Description:* To amend all recordkeeping and reporting requirements that collect information from the public; to require that all such reporting requirements receive OMB approval and clearance numbers. Imposed by statute. *Legal basis:* 44 U.S.C. Chapter 35 (Pub. L. 96-511). *Status:* Legal issues being reviewed to determine future action.

TITLE/CITATION	SUMMARY
	Priority: A. *Contact:* Roger Bowling.

PART II—REGULATIONS UNDER REVIEW

TITLE/CITATION	SUMMARY
ALCOHOL	
Ingredient Labeling for Wine, Distilled Spirits, and Malt Beverages 27 CFR Parts 4, 5, and 7	*Description:* To reconsider the ingredient labeling requirements of T.D. ATF-66, published in the FR on June 13, 1980 (45 FR 40538). (T.D. ATF-66 becomes mandatory on January 1, 1983, and requires that all domestic and foreign manufacturers of alcoholic beverage disclose on their labels certain ingredient information or address where consumer may request disclosure information.) Under section seven of E.O. 12291, ATF reconsidered T.D. ATF-66 to ensure that the potential benefits to society outweigh the potential costs to society. *Lebal basis:* 27 U.S.C. 205. *Status:* T.D. ATF-94 published in the FR on November 6, 1981 (46 FR 55093) rescinded T.D. ATF-66; effective December 7, 1981. *Priority:* A. *Contact:* Norman Blake or Roger Bowling. *Analysis:* None anticipated under E.O. 12291. Final regulatory analysis prepared under E.O. 12044.
Health Hazards Related to Alcoholic Consumption 27 CFR Parts 4, 5, and 7	*Description:* To monitor the efforts of the beverage alcohol industry in their public awareness campaign on health hazard issues relating to alcohol consumption, as an alternative to requiring health warning labels on beverage alcohol products. *Legal basis:* 27 U.S.C. 205(e). *Status:* Under consideration; final action undetermined. *Priority:* A. *Contact:* Candace Moberly at 202-566-7591.
Advertising of Wine, Distilled Spirits, and Malt Beverages 27 CFR Parts 4, 5, and 7	*Description:* To modernize the advertising regulations under section 5(f) of the FAA Act. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 27 U.S.C. 205.

TITLE/CITATION	SUMMARY
	Status: Another notice reopening the comment period on NPRM (Notice No. 362; 45 FR 83530) is under development. *Priority:* A. *Contact:* Roger Bowling.
Recodification of 27 CFR Parts 211 and 213 as 27 CFR Parts 20 and 22	*Description:* To liberalize qualification, bonding, the operational, recordkeeping, and reporting requirements imposed on users and dealers of specially denatured spirits and users of tax-free alcohol. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 7805. *Status:* Under consideration (NPRM published in the FR on October 23, 1981 (46 FR 51929); comment period ended January 21, 1982; final action scheduled for the winter of 1983. *Priority:* A. *Contact:* Norman Blake or John Linthicum.
Production of Volatile Fruit-Flavor Concentrates (RFA) 27 CFR Part 18	*Description:* To revise the regulations pertaining to volatile fruit-flavor concentrates by simplifying and modernizing certain requirements; to eliminate those requirements not mandated by statute. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 5511, 26 U.S.C. 5512, 26 U.S.C. 7805. *Status:* Under consideration (NPRM published in the FR on September 18, 1981 (46 FR 46340); comment period ended December 15, 1981); final action scheduled for the summer of 1982. *Priority:* A. *Contact:* Jim Whitley. *Analysis:* None anticipated under the RFA.
Distilled Spirits Liquor Bottles 27 CFR Parts 19, 173, 194, 250 and 251	*Description:* To eliminate registration of liquor bottle manufacturers with ATF; to amend the liquor bottle indicia requirements; and to simplify procedures for approval of distinctive liquor bottles. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 5301 and 7805. *Status:* Under consideration (NPRM published in FR on September 2, 1981 (46 FR 44000); comment period ended December 1, 1981); final action scheduled for the summer of 1982. *Priority:* B. *Contact:* Robert White.

TITLE/CITATION	SUMMARY
Wholesale Liquor Dealer; Elimination of Public Use Forms 27 CFR Part 194, 250, and 251	*Description:* To eliminate two public use forms currently required of wholesale liquor dealers and importers. Identified for review under the ATF Regulatory Reform Program *Legal basis:* 27 U.S.C. 5114. *Status:* Under consideration (NPRM published in the FR on September 18, 1981 (46 FR 46347); comment period ended December 17, 1981); final action scheduled for the summer of 1982. *Priority:* A. *Contact:* Norman Blake.
Vinegar Regulations (RFA) 27 CFR Part 195 redesignated as Part of 27 CFR Part 19	*Description:* To modernize regulations relating to the production of vinegar by the vaporizing process; to eliminate unnecessary regulatory requirements not mandated by statute. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 7805. *Status:* Under consideration (NPRM published in the FR on October 26, 1981 (46 FR 52129); comment period ended December 10, 1981); final action is being incorporated into the regulation project, entitled "Implementation of the Distilled Spirits Tax Revision Act of 1979," (listed under Part I). *Priority:* C. *Contact:* Joan Deerwester. *Analysis:* None anticipated under the RFA.
Nonbeverage Drawback (RFA) 27 CFR Part 197	*Description:* To update, clarify, simplify, and recodify regulations relating to obtaining drawback of tax on distilled spirits used in the manufacture of nonbeverage products. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 5131-5134. *Status:* Under development. *Priority:* C. *Contact:* Steve Simon. *Analysis:* An initial regulatory flexibility analysis will be prepared.
Formulas for Denatured Alcohol and Rum 27 CFR 212	*Description:* To update, clarify, simplify, and recodify the regulations relating to formulas of denatured alcohol and rum. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 5241.

TITLE/CITATION	SUMMARY
	Status: Under consideration (NPRM published in the FR on January 29, 1981 (46 FR 9644); comment period ended March 30, 1981); final action scheduled for the winter of 1983. *Priority:* C. *Contact:* Steve Simon.
Recodification of Wine Regulations (RFA) 27 CFR Parts 170 (Subpart Z), 231, and 240 as 27 CFR Part 24	*Description:* To update, simplify, and clarify regulations relating to wine; to incorporate pertinent ATF Rulings. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 7805. *Status:* Under development. *Priority:* B. *Contact:* Joan Deerwester. *Analysis:* None anticipated under the RFA.
Recodification of Beer Regulations (RFA) 27 CFR Part 245 as 27 CFR Part 25	*Description:* To update, simplify, and clarify regulations relating to the production and taxpayment of beer. Identified for revision under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 5051-5056, 26 U.S.C. 5401-5417. *Status:* Under development. *Priority:* A. *Contact:* Charles Bacon. *Analysis:* None anticipated under the RFA.
U.S. Customs Certification on Distilled Spirits from Puerto Rico 27 CFR Part 250	*Description:* To change the customs certification on distilled spirits entering the United States from Puerto Rico. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 7805. *Status:* Under development. *Priority:* B. *Contact:* James Hunt or Robert White.

PROCEDURES & PRACTICES

Losses Resulting from Disaster, Vandalism, or Malicious Mischief 27 CFR Part 170 (Subpart O redesignated) as 27 CFR Part 29 (Subpart A)	*Description:* To streamline the processing of claims for customs duties and other miscellaneous amendments. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 5064 and 26 U.S.C. 7805.

TITLE/CITATION	SUMMARY
	Status: Under development. *Priority:* C. *Contact:* Jim Whitley.
TOBACCO PRODUCTS	
Shipment of Tobacco Articles from Puerto Rico to the United States (RFA) 27 CFR Part 275	*Description:* To eliminate U.S. Customs Service involvement on shipment of Puerto Rican tobacco products to the United States; to eliminate direct ATF supervision of tobacco product shipments from Puerto Rico. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 7651. *Status:* Under development. *Contact:* John Linthicum. *Priority:* B. *Analysis:* None anticipated under RFA.
Manufacturer's Identification on Tobacco Products Packages (RFA) 27 CFR Parts 270, 290, and 295	*Description:* To liberalize requirements relating to the manufacturer's identification on tobacco product packages; and to permit additional means of identification. Identified for review under the ATF Regulatory Reform Program. *Legal basis:* 26 U.S.C. 5723. *Status:* Under development. *Priority:* C. *Contact:* Steve Simon.

LIST OF TREASURY DECISIONS PUBLISHED AFTER SEPTEMBER 15, 1981, AND BEFORE MARCH 15, 1982

TITLE/CITATION	DOCUMENT/EFFECTIVE DATE
American Viticultural Area: Fennville, MI 27 CFR Part 9	Treasury Decision ATF-91 published in the FR on September 18, 1981 (46 FR 46318). Effective: October 19, 1981.
Incorporation by Reference 27 CFR Parts 1, 4, 5, 7, 9, 13, 18, 19, 47, 55, 71, 72, 170, 178, 194, 195, 196, 197, 200, 211, 212, 213, 231, 240, 245, 250, 251, 252, 270, 275, 285, 290, and 296	Treasury Decision ATF-92 published in the FR on September 18, 1981 (46 FR 46318). Effective: October 19, 1981.
Explosive Materials (Correction) 27 CFR Part 55	Treasury Decision ATF-93 published in the FR on October 26, 1981 (46 FR 52105). Correction notice published in the FR on October 26, 1981 (46 FR 52105). Effective: October 5, 1981.
Rescission of Ingredient Labeling Regulations for Wine, Distilled Spirits, and Malt Beverages 27 CFR Parts 4, 5, and 7	Treasury Decision ATF-94 published in the FR on November 6, 1981 (46 FR 55093). Effective: December 7, 1981.
American Viticultural Area: Guenoc Valley, CA 27 CFR Part 9	Treasury Decision ATF-95 published in the FR on November 19, 1981 (46 FR 56785). Effective: December 21, 1981.
American Viticultural Area: Sonoma Valley, CA 27 CFR Part 9	Treasury Decision ATF-96 published in the FR on December 4, 1981, (46 FR 59237). Effective: January 4, 1982.
American Viticultural Area: McDowell Valley, CA 27 CFR Part 9	Treasury Decision ATF-97 published in the FR on December 4, 1981 (46 FR 59241). Effective: January 4, 1982.
American Viticultural Area: Santa Cruz Mountains, CA 27 CFR Part 9	Treasury Decision ATF-98 published in the FR on December 4, 1981 (46 FR 59239). Effective: January 4, 1982.

TABLE OF ABBREVIATIONS

ABBREVIATION	MEANING
ANPRM	Advance notice of proposed rulemaking
ATF	Bureau of Alcohol, Tobacco and Firearms
CFR	Code of Federal Regulations
DSP	Distilled spirits plant
E.O.	Executive Order
FR	FEDERAL REGISTER
FAA Act	Federal Alcohol Administration Act
OMB	Office of Management and Budget
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
RFA	Regulatory Flexibility Act
T.D	Treasury decision
T.D. with N.	[Temporary] Treasury decision with notice
T.D. w/o N.	Treasury decision without notice
Treasury	Department of the Treasury

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ALCOHOL, TOBACCO AND FIREARMS

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quarterly bulletin

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms

T 70.7:

this issue contains:

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House Conference Report No. 97–760, page 45

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NOTICE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Trade and Consumer Affairs Division, Washington, D.C. 20226.

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INTRODUCTION

The Alcohol, Tobacco and Firearms Bulletin is the authoritative instrument of the Director, Bureau of Alcohol, Tobacco and Firearms, for announcing official rulings and procedures of the Bureau and for publishing Treasury Decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record.

It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). All rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, industry regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published.

Bureau Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

FOREWORD

The Alcohol, Tobacco and Firearms Bulletin is prepared in six parts as follows:

PART I—TREASURY DECISIONS
PART II—BUREAU RULINGS
PART III—BUREAU PROCEDURES

Respectively, these three parts contain regulations of the Department of the Treasury which relate to the laws administered by the Bureau of Alcohol, Tobacco and Firearms; rulings of the Bureau which interpret the requirements of such law and regulations; and procedures of the Bureau which establish methods for performing operations in compliance with the requirements of such law and regulations. Each of these parts is divided into four subparts covering matters relating to alcohol, tobacco, firearms and explosives.

PART IV—LEGISLATION. This part is divided into two subparts as follows: Subpart A, Currently Enacted Legislation and Subpart B, Committee Reports.

PART V—ADMINISTRATIVE MATTERS. This part is divided into three subparts as follows: Subpart A, Regulations pertaining to procedural and administrative practices of the Bureau; Subpart B, Statements of Organization and Function; Subpart C, Treasury Department Orders and Delegation Orders.

PART VI—ANNOUNCEMENTS. This part contains announcements of court decisions, notices of hearing and notices of proposed rulemaking published in the Federal Register, administrative actions taken by the Bureau, and items of general interest.

DEFINITIONS

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

DEFINITIONS

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code—26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code—27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS

The following abbreviations in current use and formerly used will appear in material published in the Bulletin:

A,B,C, etc.—The name of individuals
ATF—Bureau of Alcohol, Tobacco and Firearms
ATFB—Alcohol, Tobacco and Firearms Bulletin
ATF Proc.—ATF Procedure
ATF Rul.—ATF Ruling
C.B.—Cumulative Bulletin
Ct.D.—Court Decision
CFR—Code of Federal Regulations
D.O.—Delegation Order
E.O.—Executive Order
FAA Act—Federal Alcohol Administration Act
F.R.—Federal Register
M,N,X,Y,Z, etc.—The names of corporations, places and businesses, according to context
Pub. L.—Public Law
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling
Stat.—Statutes at Large
T.D.—Treasury Decision
T.D.O.—Treasury Department Order
U.S.C.—United States Code

x and y are used to represent certain numbers and when used with the word "dollars" represent sums of money.

Treasury Decisions PART I

Subpart A—ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-107

27 CFR PART 9

Chalone Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area located in Monterey and San Benito Counties, California, to be known as "Chalone." The name for this viticultural area was initially proposed as "The Pinnacles", in Notice No. 338 (45 FR 17027). However, based on comments received and testimony given at a public hearing on May 2, 1980, the Bureau of Alcohol, Tobacco and Firearms (ATF) concluded that the proposed name would be inappropriate if used to designate the proposed viticultural area. ATF, in Notice No. 386 (46 FR 49600), reopened the comment period for submission of alternative names in lieu of "The Pinnacles." The petitioner, Gavilan Vineyards, Inc., through its Chairman of the Board, Mr. Richard H. Graff, submitted the name "Chalone" as an alternative name, which was supported by another comment. ATF believes the establishment of Chalone as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow the petitioner and other wineries which may produce wine from grapes grown in the area to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: July 14, 1982.

FOR FURTHER INFORMATION CONTACT: Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. These regulations also allow the name of the approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR for the listing of approved viticultural areas. Section 9.11, Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features.

Section 4.25a(e)(2), Title 27 CFR, outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

ATF was petitioned by the Gavilan Vineyards, Inc. (d.b.a Chalone Vineyards) to establish a viticultural area in Monterey and San Benito Counties, California, to be named "The Pinnacles." In response to this petition, ATF published a Notice of Proposed Rulemaking and Notice of Hearing, No. 338, in the **Federal Register** on March 17, 1980 (45 FR 17027).

A public hearing concerning the proposal was held in Salinas, California, on May 2, 1980, and written comments were accepted until May 16, 1980. Five persons testified at the hearing and two written comments were submitted.

Based upon testimony presented at the public hearing and written comments submitted, ATF concluded that the proposed name, "The Pinnacles", was inappropriate to designate the proposed viticultural area. This determination was arrived at because of trademark claims by another winery and the possibility of consumer confusion that would result if the proposed name were approved. Therefore, ATF issued another Notice of Proposed Rulemaking, No. 386, in the **Federal Register** on October 7, 1981 (46 FR 49600), reopening the comment period to solicit comments for alternative names. In particular, ATF requested comments concerning the names "Chalone", "Gavilan" or derivations of those names.

Comments for New Proposed Name

In response to the notice for alternative names, ATF received four comments. The comments were submitted by: the petitioner; Paragon Vineyard, a California winery not located in the vicinity of the proposed area; a law firm representing Foreign Vintages, Inc., an importer of distilled spirits; and a professor from the University of Illinois, College of Medicine.

The petitioner stated that the most satisfactory and proper designation for the viticultural area would be "the simple and unadorned word 'Chalone'." The petitioner further stated the name is associated with two of the most distinctive geographical features surrounding the proposed area, North and South Chalone Peaks. Paragon Vineyard also supported the name "Chalone" as being the most appropriate name while discounting the use of "Gavilan" as referring to numerous geographical features within California. The law firm representing the importer of distilled spirits objected to the use of "Gavilan" on the basis that their client has established common law and statutory rights as owner of the trademark "Gavilan" for tequila. The university professor commented that the proposed area was too restrictive to qualify for the designation Gavilan (or Gabilan) Mountains.

Evidence Relating to the Name "Chalone"

Paragon Vineyard submitted historical evidence which establishes the history of the name Chalone, dating back to 1816 at which time the name referred to a division of the Costanoan family which lived in the area. Further evidence was submitted which claimed that the Pinnacles Monument was initially called Chalone Peaks prior to being designated as a national monument. Within the area covered by the Pinnacles National Monument, the two most distinctive geographical features, according to the petitioner, are the North and South Chalone Peaks. The western boundary of the national monument is the eastern boundary of the viticultural area. One of the U.S.G.S. maps submitted with the petition is entitled "North Chalone Peak." Chalone Creek encircles the viticultural area on two sides, the north and east.

The viticultural area contains one winery, Chalone Vineyard, and 120 acres of vines. The petitioner stated that approximately 50 percent of the proposed area is plantable; however, due to the shortage of water for irrigation, the majority of the area is not being cultivated.

ATF believes that sufficient evidence has been submitted which establishes the historical and current use of the name Chalone as applying to the proposed viticultural area.

Boundaries

The petitioner initially proposed boundaries which included 5760 acres of land which "has historically been farmed on the [geological] bench, as well as essentially all reasonably capable of being farmed." During the public hearing, the petitioner proposed an amendment to the boundaries of an additional 2880 acres which were omitted from the original petition through an oversight on his part and which he claims properly belong in the viticultural area. The petitioner further stated that it was initially his intention to avoid including too much unplantable land. Subsequently the boundaries were amended to include "more area that was not plantable in order to avoid omitting anything." The proposal to amend the boundaries did not receive any objections at the public hearing or in post-hearing comments submitted.

The viticultural area, as amended, consists of 8640 acres of rolling land located on a geological bench in the Gabilan (or Gavilan) Mountain Range of Central Califórnia. The area has a mean elevation of 1650 feet above sea level and drains into Bryant Canyon, Stonewell Canyon and Shirttail Gulch. The boundaries are as follows: to the south and west, the points at which the land drops off sharply to the Salinas Valley; to the north, the ridge line (watershed divide) effectively dividing Monterey and San Benito Counties, and the Gloria Valley on the other side; and, to the east, the western boundary of the Pinnacles National Monument.

Based on the evidence submitted and testimony given at the public hearing, ATF has determined that the amended boundaries sufficiently distinguish the viticultural area from surrounding areas and, therefore, the amended boundaries are being adopted. While the boundaries do not precisely coincide with geographical outlines of the area, the use of section lines to describe the boundaries is acceptable in this instance since the section lines closely approximate natural boundaries.

The exact boundaries of the viticultural area and the appropriate U.S.G.S. maps used to determine the boundaries are listed in the final regulation of this document.

Geophysical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish its viticultural features from surrounding area. ATF has determined on the basis of the testimony presented at the public hearing and the written comments received that the proposed area is distinguished from the surrounding area in elevation, climate and soil.

The proposed area ranges in elevation from 1400 to 2000 feet above sea level, with a mean elevation of 1650 feet above sea level. The surrounding area to the south and west is characterized by a steep drop to the Salinas Valley, which has a mean elevation of 300 feet above sea level. The area to the east, the Pinnacles National Monument, is unavailable for private agriculture. Except for the Gloria Valley (which is distinguishable from the viticultural area for other reasons), the area to the north rises to higher elevations than those found in the viticultural area.

The petitioner claims that the differences in elevation between the Salinas Valley and the proposed area produce dramatic differences in climatic conditions. The climate of the Salinas Valley is tempered by the cooling winds from Monterey Bay which form a thick fog layer that extends to an elevation of 1000 feet. In summer the viticultural area is approximately 10 degrees warmer than the Salinas Valley because the former does not receive the cooling winds and fog cover from Monterey Bay.

The soils of the proposed area significantly differ from soils of surrounding areas. Within the proposed area, the soils primarily consist of Miocene volcanic and Mesozoic granitic rocks, heavy in limestone deposits. The Salinas Valley to the south and west consists of alluvium and river terrace rocks, while the Gloria Valley to the north is alluvial. The Pinnacles National Monument, to the east, though similar in mineral deposits, is unavailable for private agriculture.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) do not apply to this final rule because it will not have a significant economic impact on a substantial number of small entities. This final rule will not have any other significant effect on a substantial number of small entities, or cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Available information indicates that this final rule affects only one small entity.

Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, ATF is permitting wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Chalone wines.

Drafting Information

The principal author of this document is Norman P. Blake, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority

PART 9—AMERICAN VITICULTURAL AREAS

Accordingly, under the authority contained in section 5 of the Federal

Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.24. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.24 Chalone.

Par. 2 Subpart C is amended by adding § 9.24 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.24 Chalone.

(a) *Name.* The name of the viticultural area described in this section is "Chalone."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Chalone viticultural area are four U.S.G.S. 7.5 minute quadrangle maps. They are titled:

(1) "Mount Johnson, California, 1968";

(2) "Bickmore Canyon, California, 1968";

(3) "Soledad, California, 1955"; and

(4) "North Chalone Peak, California, 1969."

(c) *Boundaries.* The Chalone viticultural area includes 8640 acres, primarily located in Monterey County, California, with small portions in the north and east located in San Benito County, California. The boundaries of the Chalone viticultural area encompass:

(1) Sections 35 and 36, in their entirety, of T.16 S., R.6.E.;

(2) Sections 1, 2 and 12, in their entirety, of T.17 S., R.6 E.;

(3) Sections 6, 7, 8, 9, 16, and 17, in their entirety, the western half of Section 5, and the eastern half of Section 18 of T.17 S., R.7 E.; and

(4) Section 31, in its entirety, and the western half of Section 32 of T.16 S., R.7 E.

Signed: May 17, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: June 2, 1982.

JOHN M. WALKER JR.,
Assistant Secretary, (Enforcement and Operations).

(Filed by the Office of the Federal Register on June 11, 1982; 8:45 am, and published in the Federal Register for June 14, 1982, 47 F.R. 25517)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-108

27 CFR PART 9

Paicines Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final establishes a viticultural area in San Benito County, California to be known as "Paicines." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Paicines as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT:

Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as a appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Almaden Vineyards petitioned ATF to establish a viticultural area in San Benito County, California, to be named "Paicines."

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 379, in the **Federal Register** on August 6, 1981 (46 FR 40045), proposing the establishment of the Paicines viticultural area.

Historical and Current Evidence of the Name

The name of the area, Paicines, was well documented by the petitioner. After evaluating the petition, ATF believes that the Paicines viticultural area has a unique historical identity and that the name Paicines is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

Paicines is located about 17 miles north of Pinnacles National Monument and Park and consists of about 4,500 acres of grape-growing area. On the western side are the Cienega Vineyards and the Gabilan Mountain Range which separate Paicines from San Lucas and King City. The San Luis Dam and Pacheco are on the northeast side, and new Idria and the Panoche Valley are on the eastern edge. The San Benito River forms a portion of the western boundary and continues on through the vineyards.

The Paicines area is a wind tunnel of cool ocean air flowing to the San Joaquin Valley. Because of the relative lack of trees adjacent to the vineyard areas, the Paicines area is open to the direct influence of these winds. In the afternoon, Paicines takes advantage of slight cooling breeze that comes in off the Monterey Valley. At night Paicines is more protected from the evening fog than much of the surrounding area because of its open location. However, during periods of extremely heavy fog, the Paicines area holds the fog longer than much of the nearby area, including Cienega Valley.

Elevation ranges from 500 feet to 1,200 feet above sea level. The average elevation is lower than much of the surrounding area which is closer to the

Gabilan Mountain Range. The rainfall pattern in the Paicines area differs greatly from the area surrounding the Gabilan Mountain Range. Due to the greater distance of the Paicines area from the Gabilan Mountains, Paicines often gets less rain than much of the area closer to the Gabilan Mountain Range. Annual rainfall in the Paicines area is between 12 and 15 inches.

During winter the relative humidity in the Paicines area is more than 50 percent most of the time. In spring the relative humidity averages 60 to 75 percent at night and 40 to 50 percent during the day. Summers are quite dry; the average relative humidity in the daytime is about 20 to 25 percent. In fall, readings of 45 to 60 percent are common at night, but during the day readings generally range from 30 to 50 percent. The 10-year average temperature is around 2750 degree-days.

The Paicines area is comprised of various soil associations including Sorrento, Mocho, Clear Lake, Willows, Rincon, Antioch, Diablo, Soper, San Benito and Linne. The various soils in this area are generally well drained, of various depths, and root zones are quite deep. There are some steady alluvial fans and terrace escarpments with rapid runoff.

Boundaries

The boundaries proposed by the petitioner are adopted because they delineate an area which has climatic and topography features that distinguish it from surrounding areas.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

Miscellaneous

ATF does not wish to give the impression by approving the Paicines viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Paicines wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because this final rule will not have significant economic impact on a substantial number of small entities. This final rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and appropriate maps with boundaries marked are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue NW., Washington, D.C.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau have participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.39. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.39 Paicines.

* * * * *

Par. 2. Subpart C is amended by adding § 9.39. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

§ 9.39 Paicines.

(a) *Name*. The name of the viticultural area described in this section is "Paicines."

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Paicines viticultural area are the three U.S.G.S. maps. They are titled:

(1) "Tres Pinos Quadrangle, California," 7.5 minute series (1971);

(2) "Paicines Quadrangle, California," 7.5 minute series (1968); and

(3) "Cherry Peak Quadrangle, California," 7.5 minute series (1968).

(c) *Boundaries*. The Paicines viticultural area is located in San Benito County, California. The beginning point is the northwestern-most point of the proposed area at Township 14 South, Range 6 East, Section 3, northwest corner, located on U.S.G.S. map "Tres Pinos Quadrangle."

(1) From the beginning point the boundary runs east along the north border of Sections 3, 2, and 1, Township 14 South, Range 6 East;

(2) Thence south along the east border of Section 1, Township 14 South, Range 6 East; thence east along the north border of Section 7, Township 14 South, Range 7 East; thence south along the east border of Section 7, Township 14 South, Range 7 East;

(3) Thence continuing south along the east border of Section 18, Township 14 South, Range 7 East; thence east along the north border of Section 20, Township 14 South, Range 7 East; thence south along the east border of Sections 20, 29 and 32, Township 14 South, Range 7 East;

(4) Thence continuing south along the east border of Section 5, Township 15 South, Range 7 East; thence south along the east border of Sections 8 and

17, Township 15 South, Range 7 East to latitude line 36°37'30";

(5) Thence west along latitude line 36°37'30" to the west border of Section 18, Township 15 South, Range 7 East;

(6) Thence north along the west border of Sections 18 and 7, Township 15 South, Range 7 East; thence west along the south border of Section 1, Township 15 South, Range 6 East; thence north along the west border of Section 1, Township 15 South, Range 6 East to the 800-foot elevation contour line and then in a generally northwest direction along this 800-foot contour line to where it intersects with the south border of Section 35, Township 14 South, Range 6 East;

(7) Thence west along the south border of Section 35, Township 14 South, Range 6 East; thence north along the east border of Section 34, Township 14 South, Range 6 East; thence in a northwest direction along the northeast border of Section 34, Township 14 South, Range 6 East; thence continuing in a northwest direction along the east border of Section 27, Township 14 South, Range 6 East;

(8) Thence continuing in a northwest direction to the northeast border of Section 22, Township 14 South, Range 6 East to where an unnamed, unimproved dirt road intersects the northeast border; thence east and then northwest along the unimproved dirt road to the intersection with the San Benito River; thence following the San Benito River and meandering north to the intersection with the east border of Section 4, Township 14 South, Range 6 East;

(9) Thence continuing north along the east border of Section 4, Township 14 South, Range 6 East to the point of beginning.

Signed: July 2, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: July 20, 1982.

JOHN M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on August 13, 1982; 8:45 am, and published in the Federal Register for August 16, 1982, 47 F.R. 35480)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-109

27 CFR PART 9

Cienega Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in San Benito County, California, to be known as "Cienega Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Cienega Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: September 20, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Almaden Vineyards petitioned ATF to establish a viticultural area in San Benito County, California, to be named "Cienega Valley."

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 376, in the **Federal Register** on July 28, 1981 (46 FR 38536), proposing the establishment of the Cienega Valley viticultural area.

Historical and Current Evidence of the Name

The name of the area, Cienega Valley, was well documented by the petitioner. After evaluating the petition, ATF believes that the Cienega Valley viticultural area has a unique historical identity and that the name "Cienega Valley" is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a (e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

Cienega Valley is located at the base of the Gabilan Mountain Range which rises to 3,274 feet and forms a boundary line between San Benito and Monterey Counties. The Pescadero Creek runs through the vineyards and the San Andreas earthquake fault line borders the northeast edge. Cienega Valley lies approximately 5 miles south, overland, from the town of Hollister. On the east is the Paicines Vineyards. The Cienega Valley area is planted with hundreds of acres of vineyards consisting of numerous varieties of grapes.

Cienega Valley lies northeast of the Salinas Valley which is known as a cooler area and is often blanketed with fog. Salinas Valley strongly influences the micro-climate of the Cienega Valley by sending cooler air and fog into the Cienega grape-growing region. The terrain is extremely hilly to mountainous and the elevation ranges from approximately 930 feet to well over 1,500 feet. The average elevation in the Cienega Valley area is higher than much of the surrounding area including Paicines.

Due to the closeness of the Cienega Valley area to the Gabilan Mountain Range, Cienega Valley often has more rain than the surrounding area, thus creating different micro-climatic conditions. Rainfall averages 15.29 inches per year based on 53 years of records. There is some dry farming around the winery. However, water coming down out of the Gabilan Mountains into the Pescadero Creek is used for irrigation of a portion of the vineyards.

The Cienega Valley area is in a wind tunnel of cool ocean air flowing to the San Joaquin Valley. Trees growing adjacent to the vineyard area help protect the area from the wind. Also, Cienega Valley is protected from the wind due to the location of its eastwest canyons. Cienega Valley gets more evening fog than much of the surrounding area because of its location at the foot of the Gabilan Mountains. This fog usually burns off by early morning. Over the last four years, the temperature in Cienega Valley has averaged 2,861 degree-days as classified by the University of California at Davis system of heat summation by degree-days.

The soil in Cienega Valley is loamy, generally well drained, and often underlain by weathered granite. The main soil associations of the flood plains and alluvial fans are Sorrento-Yolo-Mocho and Clear Lake-Pacheco-Williams. The soil associations on the uplands are the San Benito-Gazos-Linne association and the Sheridan-Cineba-Auberry association. In general there is good water holding capacity and the root depth ranges from medium to quite deep.

Boundaries

The boundaries proposed by the petitioner would partially overlap with a smaller viticultural area named Lime Kiln Valley. After careful evaluation of both the Cienega Valley and Lime Kiln Valley petitions, ATF believes that both viticultural areas have enough similar characteristics to justify expanding the boundaries of Cienega Valley to include all of Lime Kiln Valley. However, due to slight differences in rainfall and temperature, ATF believes that Lime Kiln Valley exhibits distinct micro-climatic characteristics which make it distinguishable as a separate valley from the larger, more generally defined, Cienega Valley. Therefore, ATF has decided to recognize Cienega Valley as a distinct viticultural area which has the smaller Lime Kiln Valley viticultural area located totally within its boundaries. Accordingly, the boundaries of the Cienega Valley viticultural area have been expanded in the southeastern portion of the area to include all of Lime Kiln Valley.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

Miscellaneous

ATF does not wish to give the impression by approving the Cienega Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Cienega Valley wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because this final rule will not have a significant economic impact on a substantial number of small entities. This final rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and appropriate maps with boundaries marked are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau have participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.38. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.38 Cienega Valley.

* * * * *

2. Subpart C is amended by adding § 9.38. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.38 Cienega Valley.

(a) *Name.* The name of the viticultural area described in this section is "Cienega Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Cienega Valley viticultural area are four U.S.G.S. maps. They are titled:

(1) "Hollister Quadrangle, California," 7.5 minute series (1971);

(2) "Tres Pinos Quadrangle, California," 7.5 minute series (1971);

(3) "Mt. Harlan Quadrangle, California," 7.5 minute series (1968); and

(4) "Paicines Quadrangle, California," 7.5 minute series (1968).

(c) *Boundaries.* The Cienega Valley viticultural area is located in San Benito County, California. The beginning point is the Gaging Station, located on U.S.G.S. map "Paicines Quadrangle" in the southeast portion of Section 21, Township 14 South, Range 6 East.

(1) From the beginning point, the boundary follows the Pescadero Creek Bed in a southeasterly direction about 100 feet to the unimproved road and continues southwesterly on the unim-

proved road .5 mile to where it intersects with the south border of Township 14 South, Range 6 East, Section 21;

(2) Thence in a straight line to the southwest portion of Section 28, Township 14 South, Range 6 East, where the 1400-foot contour line intersects the south border of Section 28;

(3) Thence following the 1400-foot contour line through the following sections; Sections 28, 29, and 30, Township 14 South, Range 6 East; Section 25, Township 14 South, Range 5 East; Sections 30, 19, 20, and returning to 19, Township 14 South, Range 6 East, to a point where the 1400-foot contour line intersects with the section line between Sections 19 and 18, Township 14 South, Range 6 East;

(4) Thence in a straight line due north to the intersection with the 1200-foot contour line in Section 18, Township 14 South, Range 6 East;

(5) Thence following the 1200-foot contour line in a generally northwesterly direction to where it intersects with the north boundary of Township 14 South, Range 5 East, Section 10; then following this boundary line in a northwesterly direction to where this boundary intersects with the 1600-foot contour line; thence following the 1600-foot contour line in a generally northerly direction to where it intersects with the unimproved road;

(6) Thence looping southward along the unimproved road and continuing on in an easterly direction past the designated "Spring" and then in a northeasterly direction parallel with the Gulch to the Vineyard School on Cienega Road; thence in a southeasterly direction on Cienega Road .4 mile to where the unimproved road intersects; thence traveling north and following the unimproved road in a northwesterly direction about .5 mile; then looping in an easterly direction .75 mile to the intersection of the unimproved road and branching in a southeasterly direction;

(7) Thence crossing Township 13 South to Township 14 South and following the unimproved road to the intersection of the western border of Township 14 South, Range 6 East, Section 6; thence south to the northwest corner of Section 7;

(8) Thence continuing in a straight diagonal line to the southeast corner of Township 14 South, Range 6 East, Section 7; thence from the southeast corner of Section 7 .25 mile west to where it intersects with an unimproved road;

(9) Thence following this unimproved road in a southeasterly direction to the Gaging Station, the point of beginning.

Signed: July 2, 1982.

W. T. DRAKE,
Acting Director.

Approved: July 30, 1982.

J. M. WALKER, JR.,
Assistant Secretary, Enforcement and Operations.

(Filed by the Office of the Federal Register on August 18, 1982; 8:45 am, and published in the Federal Register for August 19, 1982, 47 F.R. 36125)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-110

27 CFR PART 9

Establishment of Isle St. George Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This rule establishes a viticultural area located in the western part of Lake Erie, in the State of Ohio to be named "Isle St. George." This final rule is a result of a petition submitted by Meier's Wine Cellars, a bonded winery in Cincinnati, Ohio. The Bureau of Alcohol, Tobacco and Firearms believes the establishment of Isle St. George as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: September 20, 1982.

FOR FURTHER INFORMATION CONTACT:
Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Under § 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area.

Petition

ATF was petitioned to establish a viticultural area in western Lake Erie in the State of Ohio. The proposed area is an island known as Isle St. George. This island is located entirely within Ottawa County, Ohio and is the northernmost of the Bass Islands. It is the farthest of the Bass Islands from the mainland, about 18 miles from Port Clinton, Ohio. Isle St. George is approximately one square mile in size, and is roughly 1 and ½ miles wide and slightly less than that in length. Approximately half of the island is devoted to vineyards.

The petitioner, Meier's Wine Cellars, is a bonded winery located in Silverton (Post Office Cincinnati), Ohio.

In response to this petition, ATF published a notice of proposed rulemaking, No. 406 in the **Federal Register** on February 3, 1982 (47 FR 5011), proposing the establishment of the "Isle St. George" viticultural area. No written comments were received in response to the notice, and ATF is adopting the "Isle St. George" viticultural area as proposed.

Historical and Current Evidence of the Name

The name Isle St. George was well documented in the petition as being long associated with the proposed area in Ohio.

This name has been associated with North Bass Island since at least 1903. The 1903 edition of the U.S.G.S. quadrangle map, "Put-in-Bay," identifies the community on North Bass Island as "Isle St. George."

A post office has existed on the island since 1874, and the "Isle St. George" cancellation is currently in use. The petitioner, Meier's Wine Cellars, has used the "Isle St. George" designation on its labels since 1943 to identify wines made from grapes grown on the island.

The island has a long history of grape-growing. The first grapes were planted on the island in 1853 by Peter and Simon Fox. By the turn of the century, there were two wineries on the island to process grapes.

Today there are approximately 350 acres of grapes on the island and grape-growing is the primary occupation of the inhabitants of the island. The petitioner stated that Catawba grapes have been cultivated continuously on Isle St. George for over 117 years, and that other grapes are also grown. All grapes grown on Isle St. George are sent to the Ohio mainland for processing since there are no wineries on the island.

ATF has concluded that the historical and current evidence supports the viticultural area as a distinct grape-growing area.

Geographic Evidence

The petition established Isle St. George viticultural area as a distinctive grape-growing region distinguished from surrounding areas on the basis of soils, topography, and climate.

Isle St. George is relatively flat and no point is more than 14 feet above the surface of Lake Erie (mean elevation 571 feet). The soil on the island is shallow, sandy loam and silt loam. The limestone bedrock in some areas is only 20 to 30 inches deep.

The climate of Isle St. George is significantly different than surrounding areas. Growing conditions on the island are affected by moderating thermodynamic effects of the waters of Lake Erie. During the spring and summer months the lake water absorbs heat. In the fall, as the air becomes cooler, lake water gives up accumulated heat to the surrounding air and land, thus warming the island. As a result, the first frost is delayed and the growing season is prolonged. Consequently, Isle St. George has a frost-free period of 206 days, longer than any other area in the State of Ohio. In the spring, frozen lake waters cool the air surrounding the island and retard the opening of the grape buds until all danger from frost and unseasonable cold spells has passed.

The average annual precipitation for Isle St. George is less than the average for adjacent areas. Isle St. George averages 26.7 inches of precipitation per year compared to 31.7 inches for nearby Kelley's Island, and 32.1 inches for Sandusky.

Based on the information contained in the petition pertaining to the geographical features, ATF has determined that this area is distinguishable from the surrounding area.

Boundaries

This viticultural area consists entirely of the island named North Bass Island on the "Put-in-Bay, Ohio" U.S.G.S. map. No comments were received in response to the notice of proposed rulemaking, and the area boundaries are adopted as proposed.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained may only be substantiated by consumer acceptance of Isle St. George wines.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information

The principal author of this final rule is Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended to add § 9.51 as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.51 Isle St. George.

* * * * *

Par. 2. Subpart C is amended by adding § 9.51. As added, § 9.51 reads as follows:

§ 9.51 Isle St. George.

(a) *Name.* The name of the viticultural area described in this section is "Isle St. George."

(b) *Approved maps.* The approved map for determining the boundary of the Isle St. George viticultural area is the U.S.G.S. guadrangle map, "Put-in-Bay, Ohio", 7.5 minute series, edition of 1969.

(c) *Boundaries.* The Isle St. George viticultural area is located entirely within Ottawa County, Ohio. The boundary of the Isle St. George viticultural area is the shoreline of the island named "North Bass Island" on the "Put-in-Bay, Ohio" U.S.G.S. map, and the viticultural area comprises the entire island.

Signed: July 7, 1982.

W. T. DRAKE,
Acting Director.

Approved: July 30, 1982.

J. M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on August 19, 1982; 8:45 am, and published in the Federal Register for August 20, 1982, 47 F.R. 36419)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-112

27 CFR PART 9

Livermore Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a Viticultural area in Alameda County, California, to be known as "Livermore Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Livermore Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT:
Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF Published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Fifteen Livermore Valley vintners and growers petitioned ATF to establish a viticultural area in Alameda County, California, to be named "Livermore Valley."

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 392, in the **Federal Register** on October 30, 1981 (46 FR 53688), proposing the establishment of the Livermore Valley viticultural area.

Comments

One comment was received during the comment period. The comment was from one of the wineries located in the Livermore Valley area. The commenter stated that he fully supported the Livermore Valley viticultural area petition. ATF has received no information from any source indicating opposition to the petition.

Evidence of the Name

The name of the area, Livermore Valley, was well documented by the petitioner. After evaluating the petition and the comment received, ATF believes that the Livermore Valley viticultural area has a unique historical identity and that the name "Livermore Valley" is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a (e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

The petition shows that Livermore Valley is one of the coastal intermountain valleys that surround the San Francisco Bay depression. The valley floor is approximately 15 miles long and 10 miles wide. Starting in the east, the watershed area of Livermore Valley is bounded by the Altamont Hills and Crane Ridge, to the south by Cedar Mountain Ridge and Rocky Ridge, in the west by the Pleasanton Ridge, and in the north by the Black Hills. The valley's geographic location is generally the area covered by the political boundaries of Murray and Pleasanton townships.

Livermore Valley has a moderate coastal climate which is conducive to the growing of grapes, especially the sauterne type grapes and several premium red varieties. The moderate climate is a result of its proximity to the San Francisco Bay and the Pacific Ocean. The cool marine winds and the morning fog are important factors in temperature control during the growing season and in keeping the area relatively frost free during the early spring. The wine grapes grown in Livermore Valley thrive on the cool nights and warmer days. The greatest part of the vineyard acreage is in region III as classified by the University of California at Davis system of heat summation by degree-days. A small portion of the area within Livermore Valley is classified as region II.

The main soil type is the Yolo-Pleasanton associations with the Livermore gravelly and very gravelly series being prominent in the southern portion of the valley.

The elevation where the vineyards are cultivated starts at 650-800 feet above sea level and slopes toward the valley floor to about 450 feet above sea level.

The main streams in the valley are the Arroyo Mocho, Arroyo Del Valle, and the Arroyo Las Positas which are formed by the watershed run-off of the previously named ridges. The drainage pattern is well developed with the streams flowing in a westerly direction. These streams converge about one mile west of the town of Pleasanton and form the Arroyo de la Laguna. This stream in turn joins Alameda Creek and empties into San Francisco Bay.

The average rainfall is 14.45 inches. The rain falls mainly during the winter and early spring. There is little or no precipitation during the summer months.

With the large increase in population in the Livermore Valley over the past twenty years, the water table has been lowered to a point where the vines no longer are able to depend on a constant water supply from that source. Since the completion of the Del Valle Dam and the filling of the Del Valle Reservoir, both the Arroyo Mocho and Arroyo Del Valle contain water released from the reservoir almost year-round where formerly they were dry by early summer. The South Bay Aqueduct, completed in 1967, provides overhead sprinkler irrigation for some of the vineyards. This type of irrigation is also used for heat suppression and frost protection as well as supplemental watering.

The temperature of Livermore Valley is moderate during the winter and moderately high in the summer. The average high is 72.9 degrees Fahrenheit and the average low is 45.3 degrees Fahrenheit. Temperatures in the summer have exceeded 100 degrees Fahrenheit and the lowest temperature recorded in the winter was 19 degrees Fahrenheit. The extremes rarely last more than a few days before the marine air asserts its normal pattern.

The growing season, March through early November, is long enough to assure crop maturity. The average number of growing days is 254.

After evaluating the petition and comment, ATF has determined that due to the topographic and climatic features of Livermore Valley, it is distinguishable from the surrounding areas.

Boundaries

The boundaries proposed by the petitioner are adopted. ATF believes that these boundaries delineate an area with distinguishable physical and climatic features.

Miscellaneous

ATF does not wish to give the impression by approving the Livermore Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Livermore Valley wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and comment received are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue NW., Washington, DC.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau have participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to include the title of § 9.46. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.46 Livermore Valley.

* * * * *

Par. 2. Subpart C is amended by adding § 9.46. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.46 Livermore Valley.

(a) *Name.* The name of the viticultural area described in this section is "Livermore Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Livermore Valley viticultural area are seven U.S.G.S. maps. They are titled.

(1) "Dublin Quadrangle, California," 7.5 minute series (1980);

(2) "Livermore Quadrangle, California," 7.5 minute series (1973);

(3) "La Costa Valley Quadrangle, California—Alameda Co.," 7.5 minute series (1968);

(4) "Mendenhall Springs Quadrangle, California—Alameda Co.," 7.5 minute series (1971);

(5) "Altamont Quadrangle, California—Alameda Co.," 7.5 minute series (1968);

(6) "Byron Hot Springs Quadrangle, California," 7.5 minute series (1968);

(7) "Tassajara Quadrangle, California," 7.5 minute series (1968);

(c) *Boundaries.* The Livermore Valley viticultural area is located in Alameda County, California. The beginning point is Bench Mark (BM) 425 located along the Alameda County/Contra Costa County line in the top portion of U.S.G.S. map "Dublin Quadrangle."

(1) From the beginning point, the boundary runs in a southeasterly direction along an unnamed road which crosses Interstate 580 and turns into Foothill Road;

(2) Thence continuing along Foothill Road in southeasterly direction to the intersection of Castlewood Drive which is located directly east of the Castlewood Country Club;

(3) Thence east on Castlewood Drive to Bench Mark (BM) 333;

(4) Thence in a straight line in a southeasterly direction to VABM Vern (1264) located on U.S.G.S. map "Livermore Quadrangle";

(5) Thence continuing in a southeasterly direction in a straight line to Bench Mark (BM) 580, located in the northeast corner of U.S.G.S. map "La Costa Valley Quadrangle";

(6) Thence in a straight line in a southeasterly direction to the northeast corner of Section 15, located in the northwest portion of U.S.G.S. map "Mendenhall Springs Quadrangle";

(7) Thence south to the southeast corner of Section 15, then east on the south border of Section 14, then south along the west boundary of Section 24;

(8) Thence east on the south border of Sections 24 and 19 to the southwest corner of Section 20;

(9) Thence north along the east boundaries of Sections 19, 18, 7, 6, 31, 30, 19, 18, 7, 6, 31, 30, 19 and 18 located on U.S.G.S. maps "Mendenhall Springs Quadrangle," "Altamont Quadrangle," and "Byron Hot Springs Quadrangle";

(10) Thence west along the northern boundaries of Sections 18, 13, 14, 15, and 16 to where the northern boundary line of Section 16 intersects with Alameda County/Contra Costa County line, located in the southeast corner of U.S.G.S. map "Tassajara Quadrangle";

(11) Thence in a southwesterly direction along the Alameda County/Contra Costa County line to the point of beginning.

Signed: July 22, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: August 20, 1982.

DAVID Q. BATES,
Deputy Assistant Secretary
(Operations).

(Filed by the Office of the Federal Register on August 31, 1982, 9:45 am; and published in the Federal Register for September 1, 1982, 47 F.R. 38519)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-113

27 CFR PART 9

Finger Lakes Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in the State of New York, to be named "Finger Lakes." This final rule was initiated as a result of a petition filed by the Finger Lakes Wine Growers Association. The final rule resulted from two notices of proposed rulemaking, Notice Nos. 356 and 385, published in the **Federal Register** on November 6, 1980 (45 FR 73694) and October 7, 1981 (46 FR 49597), and a public hearing held in Geneva, New York, on February 11, 1981. The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Finger Lakes as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wine they purchase.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT:
Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692), which added a new Part 9 to 27 CFR for the listing of approved viticultural areas. Section 9.11, Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features.

Section 4.25a(e)(2), Title 27 CFR, outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

ATF was petitioned by the Finger Lakes Wine Growers Association to establish a viticultural area in the State of New York, to be named "Finger Lakes." In response to this petition, ATF published a Notice of Proposed Rulemaking, No. 356, on November 6, 1980 (45 FR 73694), and a Notice of Hearing, No. 361, on December 15, 1980 (45 FR 82472) in the **Federal Register**.

The proposed Finger Lakes viticultural area included approximately 8,400 square miles which encompassed

14 adjoining counties in their entirety: Monroe, Wayne, Livingston, Ontario, Yates, Seneca, Cayuga, Onondaga, Steuben, Schuyler, Chemung, Tompkins, Tioga, and Cortland. The petitioner furnished information which documented the proposed area as the second largest grape-growing area in New York State, with over 14,000 acres of labrusca, French hybrid and vinifera grapes. The proposed 14-county area is the same area which was officially designated by the State of New York in 1967 as the "Finger Lakes Region."

In response to Notice No. 356, ATF received 16 comments, all but one of which supported the petition. During the public hearing held on February 11, 1981, in Geneva, New York, 10 witnesses presented testimony supporting the boundaries of the area as proposed. The witnesses based their testimony on (1) the historical significance of the name "Finger Lakes" as relating to the proposed 14 adjoining county area, (2) the general 140-150 day growing season around the Finger Lakes area, and (3) the possible consumer confusion that would occur if the boundaries were amended to other than those proposed.

ATF sought information from the witnesses as to (1) the 60-day difference in growing seasons within the proposed area, (2) the geographical and climatic features which primarily influence grape growing within the proposed area, (3) where, within the proposed area grape growing is commercially viable, and (4) why the entire 14-county area was proposed when over 9 percent of the grapes are grown in only six of the counties.

In response to the questions, witnesses testified as follows: (1) The 143-day growing season generally defines the boundaries of commercial viability for grape growing. (2) The geographical features which influence grape growing are a combination of the moderating effect on the climate of the 11 Finger Lakes and the topography of the land near the lakes, which results in increased "air drainage" the farther one moves from Lake Ontario. (3) The older grape vineyards are generally in the immediate vicinity of the older and more established wineries for reasons of economy of transportation, while the newer vineyards and wineries are expanding away from the traditional grape-growing areas; the expansion of new wineries and vineyards was caused in part by the enactment of the Farm Winery Bill of 1976. (4) The entire 14-county area was proposed because of its historical and commercial significance as the established "Finger Lakes Region," which is one of the vacation regions established by the State of New York.

After evaluating the comments submitted and testimony presented, ATF concluded that the proposed boundaries did not clearly depict a distinct grape-growing area which contained geographic and climatic characteristics that would distinguish it viticulturally from surrounding areas. Therefore, ATF proposed amended boundaries in a notice of proposed rulemaking, Notice No. 385, published October 7, 1981, in the **Federal Register** (46 FR 49597). The proposed amended boundaries (1) encompass an area with a relatively uniform growing-season length and (2) include, and are proximate to, the 11 Finger Lakes. The amended boundaries reduced the petitioned area from 8,400 to less than 4,000 square miles.

Public Comment

In response to Notice No. 385, the only comment submitted was one from Stafford H. Krause, on behalf of the Finger Lakes Wine Growers Association. Mr. Krause also filed an amendment to that comment. The comment supported the boundaries proposed by ATF as being viticulturally distinct by reason of geographic and climatic conditions. However, the initial comment disagreed with ATF's boundaries on the basis that they were too limited and (1) had omitted certain vineyards to the north, near Lake Ontario, and (2) had not taken into account the climatic influence of Lake Ontario. The petitioner stated that the historic "Finger Lakes Region" boundaries are well known by the public, and a weighing of viticultural exactness against possible public confusion should be considered. The amendment to the comment stated that while the Finger Lakes Wine Growers Association preferred the originally proposed boundaries, it did not oppose the amended boundaries.

Boundaries

In response to ATF's proposal to amend the petitioned boundaries, the commenter stated that the boundaries were too limited and may create consumer confusion because they differ from the historic and well known "Finger Lakes Region" boundaries.

In addition to the "Finger Lakes Region" for tourism purposes, the State of New York has established a Finger Lakes area with different boundaries for purposes of statistical reporting of grape production and usage. The New York State Department of Agriculture and Markets defines the "Finger Lakes Grape Region" as the area encompassing the five adjoining counties of Ontario, Yates, Seneca, Schuyler and Steuben. These counties are located in the south and central portion of the petitioned area. The other nine counties which were in the petitioned area are referred to as a portion of the "other western counties."

The petitioner's comment regarding the omission of certain vineyards to the north refers to a limited number of vineyards near Lake Ontario which grow and supply Niagara grapes to some of the wineries within the boundaries of the amended area. The area in which these vineyards are located has a growing season which is 20-30 days longer than the amended area. Due to its proximity to Lake Ontario, this area is influenced by geographic and climatic conditions of Lake Ontario, one of the Great Lakes, rather than the Finger Lakes.

Notwithstanding the significance of the northern vineyards near Lake Ontario or the Finger Lakes regional designations, as established by the State of New York for tourism and grape statistical reporting purposes. ATF has determined that the amended boundaries, as proposed in Notice No. 385 (46 FR 49597), outline a grape-growing area which is distinct from surrounding areas for purposes of wine labeling, a viticultural area must meet the requirement that it possess geographical features which distinguish it viticulturally from surrounding areas, as opposed to any other criteria utilized by the State of New York in determining the two different Finger Lakes regional designations. Therefore, the amended boundaries are adopted.

The exact boundaries of the Finger Lakes viticultural area and the appropriate U.S.G.S. maps used to determine the boundaries are listed in the final regulations of this document.

Evidence Relating to the Name "Finger Lakes"

The petitioner submitted evidence which documented the name "Finger Lakes" as referring to an area in west central New York State which contains, and derives its name from, 11 fingershaped lakes. This area is recognized in many wine publications as having the most important vineyards for wine production in the eastern United States. The name is referred to in all major wine publications and books which describe and report on wineries and vineyards located in the eastern United States.

ATF believes that sufficient evidence has been submitted which establishes the historical and current use of the name "Finger Lakes" as applying to a grape-growing area which is locally and nationally recognized as representing the area surrounding the 11 Finger Lakes.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish it viticulturally from surrounding areas. Information was submitted with the petition and testimony was presented at the public hearing distinguishing the Finger Lakes area, as amended, from surrounding areas due to climatic conditions and geographical features associated with its proximity to the 11 finger-shaped lakes.

The petition contained information which listed the area around the 11 lakes as having an average 143-day growing season. In addition, the testimony at the public hearing indicated that the 143-day growing season represented the boundary for commercially viable grape growing. Immediately to the northeast of the amended boundaries, the growing season rapidly expands to 170-180 days, while just to the southwest the growing season diminishes to 110-120 days.

The petition, and testimony presented at the public hearing, pointed out the temperature moderating effect of the 11 lakes as being one of the most influential factors for grape growing in the area. The "lake effect" creates less severe temperature extremes in winter and summer. The testimony also addressed the topography of the land near the Finger Lakes and the resultant increased "air drainage" surrounding the lakes the greater the distance from Lake Ontario.

ATF has concluded that three of the factors relied upon by the petitioner, specifically the length of the growing season, the moderating effect of the Finger Lakes on the climate, and the "air drainage" effect of the Finger Lakes topography, do not support the boundaries originally proposed. Rather, the evidence indicates that while these factors are significant, they distinguish a smaller area (within the area originally proposed) from the surrounding area. The proper boundaries for defining the viticultural area are closer to the Finger Lakes than those originaly proposed.

Therefore, ATF has adopted the amended boundaries (1) which encompass an area with a relatively uniform growing season length and (2) which include, and are approximate to, the 11 Finger Lakes.

Regulatory Flexibility Act

The second notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605 (b)), that if promulgated as a final rule, it will not have a significant economic impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 604) for a final regulatory flexibility analysis shall not apply to this final rule.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 issued February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries: Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Miscellaneous

ATF is approving the Finger Lakes area as being viticulturally distinct from surrounding areas. By approving the area, ATF is allowing wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Finger Lakes wines.

Drafting Information

The principal author of this document is Norman P. Blake, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1 The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.34 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.34 Finger Lakes.

Par. 2. Subpart C is amended by adding § 9.34 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.34 Finger Lakes.

(a) *Name*. The name of the viticultural area described in this section is "Finger Lakes."

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Finger Lakes viticultural area are four U.S.G.S. maps scaled 1:250,000. They are entitled:

(1) "ROCHESTER", Location Diagram NK 18-1, 1961;

(2) "UTICA", Location Diagram NK 18-2, 1962;

(3) "ELMIRA", Location Diagram NK 18-4, 1968; and

(4) "BUFFALO", Location Diagram NK 17-6 (30-L), 1962.

(c) *Boundaries*. The boundaries of the Finger Lakes viticultural area, based on landmarks and points of reference found on the approved maps, are as follows: Starting at the most northwest point, the intersection of the Erie Canal and the north/south Conrail line south of the City of Rochester, east along the course of the Erie Canal approximately 56 miles (45 miles due east) to the intersecion of New York State Highway 89 (NY-89); south on NY-89 four miles to the intersection of highway US-20; east on US-20 for 36 miles to the intersection of Interstate 81 (I-81); south along I-81 for ten miles to NY-281; continuing south on NY-281 for 20 miles around the western city limits of Cortland where NY-281 becomes NY-13; continuing southwest on NY-13 (through the cities of Dryden and Ithaca) approximately 36 miles to the intersection of NY-224; from this point continue due west one mile to the southern boundary of Schuyler County, continuing west along this county line 20 miles to the community of Meads Creek; north along the Schuyler-Steuben county line four miles to the major east/west power line; west along the power line for eight miles to the intersection of NY-17 (four miles southeast of the community of Bath); northwest on NY-17 approximately nine miles to the intersection of I-390; northwest along I-390 for 21 miles to the intersection of NY-36; north two miles through the community of Dansville to NY-63; northwest on NY-63 approximately 18 miles to the intersection of NY-39, just south of Genesco; north on NY-39 nine miles to the intersection where the west and north/south Conrail lines meet at the community of Avon; north along the north/south Conrail line for 15 miles to the beginning point at the intersection of the Erie Canal.

Signed: July 22, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: August 20, 1982.

DAVID Q. BATES,
Deputy Assistant Secretary (Operations).

(Filed by the Office of the Federal Register on August 31, 1982, 8:45 am; and published in the Federal Register for September 1, 1982, 47 F.R. 38516)

Bureau Rulings PART II

Subpart A—ALCOHOL

27 CFR 5.22(b)(4): BLENDED WHISKEY

(Also 5.22(b)(5))

The straight whiskey component of a blended whiskey may be satisfied by employing a blend of straight whiskies.

ATF Rul. 82–10

The Bureau has been asked whether the standard of identity for blended whiskey which appears in 27 CFR section 5.22(b)(4) would permit the "straight whiskey" component of a blended whiskey to be satisfied by "a blend of straight whiskies" as defined by 27 CFR section 5.22(b)(5).

"Blended whiskey" is defined in section 5.22(b)(4), in part, as:

> "(a) . . .a mixture which contains at least 20 percent of straight whiskey on a proof-gallon basis and, separately or in combination, whiskey or neutral spirits. . ."

"A blend of straight whiskies" is defined by section 5.22(b)(5), in part, as:

> "(a) . . .a mixture of straight whiskies. A blend of straight whiskies consisting entirely of one of the types of straight whiskey and not conforming to the standard for 'straight whiskey,' shall be further designated by that specific type of straight whiskey; for example, 'blend of straight rye whiskies.' "

The definition of "straight whiskey" in section 5.22(b)(1)(iii) requires that such products be stored in oak containers of a prescribed type for 2 years or more.

In Press Release No. 3, dated October 16, 1935, the Administrator, Federal Alcohol Administration explained that the purpose for the 20 percent straight whiskey requirement in blended whiskey was to disclose to the consumer that the blended whiskey product "(c)ontains in addition to neutral spirits at least 20% of whiskey which has been aged at least 2 years." Since a blend of straight whiskies is nothing more than a mixture composed exclusively of straight whiskies, utilizing a blend of straight whiskies to satisfy the straight whiskey component of a blended whiskey would insure that 20 percent of the blended whiskey has been aged at least 2 years. Also, 27 CFR section 5.40(a) recognizes the use of more than one straight whiskey in blended whiskey.

Held: The straight whiskey component of a blended whiskey may be satisfied by employing a blend of straight whiskies.

27 CFR 5.22(b)(5): Blended Whiskey

The straight whiskey component of a blended whiskey may be satisfied by employing a blend of straight whiskies. See ATF Ruling 82-10, above.

Legislation

PART IV

Subpart A—Currently Enacted Legislation

Public Law 97-248
97th Congress, H.R. 4961 [1]
September 3, 1982

An Act to amend the Internal Revenue Code of 1954, and for other purposes.

Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS: AMENDMENT OF 1954 CODE

(a) Short Title.—This Act may be cited as the "Tax Equity and Fiscal Responsibility Act of 1982".

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TITLE II—REVENUE MEASURES

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SUBTITLE F—EXCISE TAXES

* * * * *

PART III—CIGARETTES

SEC. 283. INCREASE IN TAX ON CIGARETTES

(a) Rate of Tax.—Subsection (b) of section 5701 (relating to rate of tax on cigarettes) is amended—

(1) by striking out "$4" in paragraph (1) and inserting in lieu thereof "$8; and

(2) by striking out "8.40" in paragraph (2) and inserting in lieu thereof $16.80".

(b) Floor Stocks.—

(1) Imposition of Tax.—On cigarettes manufactured in or imported into the United States which are removed before January 1, 1983, and held on such date for sale by any person, there shall be imposed the following taxes:

(A) Small Cigarettes.—On cigarettes, weighing not more than 3 pounds per thousand, $4 per thousand;

(B) Large Cigarettes.—On cigarettes, weighing more than 3 pounds per thousand $8.40 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(2) Liability for Tax and Method of Payment.—

(A) Liability for Tax.—A person holding cigarettes on January 1, 1983, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) Method of Payment.—The tax imposed by paragraph (1) shall be treated as a tax imposed under section 5701 and shall be due and payable on January 18, 1983, in the same manner as the tax imposed under such section is payable with respect to cigarettes removed on after January 1, 1983.

(3) Cigarette.—For purposes of this subsection, the term "cigarette"

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[1] H.R. Report No. 97-404 and Senate Report No. 97-494 are not published.

shall have the meaning given to such term by subsection (b) of section 5702 of the Internal Revenue Code of 1954.

(4) Exception for Retailers. —The taxes imposed by paragraph (1) shall not apply to cigarettes in retail stocks held on January 1, 1983, at the place where intended to be sold at retail.

(c) Effective Date.—The amendment made by subsection (a) shall apply with respect to cigarettes removed after December 31, 1982 and before October 1, 1985.

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SUBTITLE G—MISCELLANEOUS

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SEC. 292. AWARDING OF COSTS AND CERTAIN FEES.

(a) In General.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7430 as section 7431 and by inserting after section 7429 the following new section:

"SEC. 7430. AWARDING OF COURT COSTS AND CERTAIN FEES.

"(a) In General.—In the case of any civil proceeding which is—

"(1) brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, and

"(2) brought in a court of the United States (including the Tax Court),

the prevailing party may be awarded a judgment for reasonable litigation costs incurred in such proceeding.

"(b) Limitations.—

"(1) Maximum dollar amount. —The amount of reasonable litigation costs which may be awarded under subsection (a) with respect to any prevailing party in any civil proceeding shall not exceed $25,000.

"(2) Requirement that administrative remedies be exhausted.—A judgment for reasonable litigation costs shall not be awarded under subsection (a) unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service.

"(3) Only costs allocable to the United States.—An award under subsection (a) shall be made only for reasonable litigation costs which are allocable to the United States and not to any other party to the action or proceeding.

"(4) Exclusion of declaratory judgment proceedings.—

"(A) In general.—No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

"(B) Exception for section 501(C)(3) determination revocation proceedings.—Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in section 501(c)(3).

"(c) Definitions.—For purposes of this section—

"(1) Reasonable litigation costs.—

"(A) In general.—The term 'reasonable litigation costs' includes—

"(i) reasonable court costs,

"(ii) the reasonable expenses of expert witnesses in connection with the civil proceeding,

"(iii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

"(iv) reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding.

"(B) Attorney's fees. – In the case of any proceeding in the Tax Court, fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court shall be treated as fees for the services of an attorney.

"(2) Prevailing party. –

"(A) In general. – The term 'prevailing party' means any party to any proceeding described in subsection (a) (other than the United States or any creditor of the taxpayer involved) which –

"(i) establishes that the position of the United States in the civil proceeding was unreasonable, and

"(ii)(I) has substantially prevailed with respect to the amount in controversy, or

"(II) has substantially prevailed with respect to the most significant issue or set of issues presented.

"(B) Determination as to prevailing party. – Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made –

"(i) by the court, or

"(ii) by agreement of the parties.

"(3) Civil actions. – The term 'civil proceeding' includes a civil action.

"(d) Multiple Actions. – For purposes of this section, in the case of –

"(1) multiple actions which could have been joined or consolidated, or

"(2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single proceeding in the same court,

such actions or cases shall be treated as one civil proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated for purposes of this section.

"(e) Right of Appeal. – An order granting or denying an award for reasonable litigation costs under subsection (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

"(f) Termination. – This section shall not apply to any proceeding commenced after December 31, 1985."

(b) Penalty for Using Tax Court Proceedings for Delay: Penalty for Frivolous or Groundless Proceeding. – The first sentence of section 6673 (relating to damages assessable by instituting proceedings before the Tax Court merely for delay) is amended to read as follows: "Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless, damages in an amount not in excess of $5,000 shall be awarded to the United States by the Tax Court in its decision."

(c) Application With Title 28. – Section 2412 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1954 applies (determined without regard to subsections (b) and (f)). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of section 2412 of title 28, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).".

(d) Conforming Amendments.—

(1) The table of sections for subchapter B of chapter 76 is amended by striking out the item relating to section 7430 and inserting the following new items:

"Sec. 7430. Awarding of court costs and certain fees.
"Sec. 7431. Cross references".

(2)(A) The section heading of section 6673 is amended by striking out "Merely for Delay." and inserting in lieu thereof "Primarily for Delay, Etc.".

(B) The table of sections for subchapter B of chapter 68 is amended by striking out "merely for delay." in the item relating to section 6673 and inserting in lieu thereof "primarily for delay, etc.".

(e) Effective Dates.—

(1) In general.—The amendments made by this section shall apply to civil actions or proceedings commenced after February 28, 1983.

(2) Penalty.—The amendments made by subsections (b) and (d)(2) shall apply to any action or proceeding in the Tax Court commenced after December 31, 1982.

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TITLE III—TAXPAYER COMPLIANCE

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SUBTITLE B—IMPROVED INFORMATION REPORTING

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PART II—PROVISIONS TO IMPROVE REPORTING GENERALLY

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SEC. 316. INCREASE IN CIVIL PENALTY ON FAILURE TO SUPPLY IDENTIFYING NUMBERS.

(a) In General.—Subsection (a) of section 6676 (relating to failure to supply identifying numbers) is amended to read as follows:

"(a) Civil Penalties.—

"(1) In general.—If any person who is required by regulations prescribed under section 6109—

"(A) to include his taxpayer identification number in any return, statement, or other document,

"(B) to furnish his taxpayer identification number to another person, or

"(C) to include in any return, statement, or other document made with respect to another person the taxpayer identification number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not to willful neglect, pay a penalty of $5 for each such failure described in subparagraph (A) and $50 for each such failure described in subparagraph (B) or (C), except that the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.

"(2) Taxpayer identification number defined.—The term 'taxpayer identification number' means the identifying number assigned to a person under section 6109."

(b) Effective Date.—The amendments made by this section shall apply with respect to returns the due date for the filing of which (without regard to extensions) is after December 31, 1982.

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SUBTITLE C—ABUSIVE TAX SHELTERS, ETC., SUBSTANTIAL UNDERPAYMENTS; FALSE DOCUMENTS; FRIVOLOUS RETURNS

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PART II—SUBSTANTIAL UNDERPAYMENT: FALSE DOCUMENTS: FRIVOLOUS RETURNS; ETC.

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SEC. 324. PENALTIES FOR DOCUMENTS UNDERSTATING TAX LIABILITY.

(a) General Rule.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6700 the following new section:

"SEC. 6701. PENALTIES FOR AIDING AND ABETTING UNDERSTATEMENT OF TAX LIABILITY.

"(a) Imposition of Penalty.—Any person—

"(1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document in connection with any matter arising under the internal revenue laws.

"(2) who knows that such portion will be used in connection with any material matter arising under the internal revenue laws, and

"(3) who knows that such portion (if so used) will result in an understatement of the liability for tax of another person,

shall pay a penalty with respect to each such document in the amount determined under subsection (b).

"(b) Amount of Penalty.—

"(1) In general.—Except as provided in paragraph (2), the amount of the penalty imposed by subsection (a) shall be $1,000.

"(2) Corporations.—If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by subsection (a) shall be $10,000.

"(3) Only 1 penalty per person per period.—If any person is subject to a penalty under subsection (a) with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under subsection (a) with respect to any other document relating to such taxpayer for such taxable period (or event).

"(c) Activities of Subordinates.—

"(1) In general.—For purposes of subsection (a), the term 'procures' includes—

"(A) ordering (or otherwise causing) a subordinate to do an act, and

"(B) knowing of, and not attempting to prevent, participation by a subordinate in an act.

"(2) Subordinate.—For purposes of paragraph (1), the term 'subordinate' means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

"(d) Taxpayer Not Required To Have Knowledge.—Subsection (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

"(e) Certain Actions Not Treated as Aid or Assistance.—For purposes of subsection (a)(1), a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

"(f) Penalty in Addition to Other Penalties.—

"(1) In general.—Except as provided by paragraph (2), the penalty imposed by this section shall be in addition to any other penalty provided by law.

"(2) Coordination with return preparer penalties.—No penalty shall be assessed under subsection

(a) or (b) of section 6694 on any person with respect to any document for which a penalty is assessed on such person under subsection (a)."

(b) Clerical Amendment.—The table of sections for subchapter B of chapter 68 is amended by inserting after the item relating to section 6700 the following new item:

"Sec. 6701. Penalties for aiding and abetting understatement of tax liability."

(c) Effective Date.—The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

(d) Cross Reference.—

For provisions relating to burden of proof and prepayment forum, see section 6703 of the Internal Revenue Code of 1954, as added by section 333 of this Act.

SEC. 325. FRAUD PENALTY.

(a) General Rule.—Subsection (b) of section 6653 (relating to fraud penalty is amended to read as follows:

"(b) Fraud.—

"(1) In general.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment.

"(2) Additional amount for portion attributable to fraud.—There shall be added to the tax (in addition to the amount determined under paragraph (1)) an amount equal to 50 percent of the interest payable under section 6601—

"(A) with respect to the portion of the underpayment described in paragraph (1) which is attributable to fraud, and

"(B) for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

"(3) No negligence addition when there is addition for fraud.—The addition to tax under this subsection shall be in lieu of any amount determined under subsection (a).

"(4) Special rule for joint returns.—In the case of a joint return under section 6013, this subsection shall not apply with respect to the tax of the spouse unless some part of the underpayment is due to the fraud of such spouse."

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to taxes the last day prescribed by law for payment of which (determined without regard to any extension) is after the date of enactment of this Act.

* * * * *

SEC. 329. INCREASES IN CERTAIN CRIMINAL FINES.

(a) Attempt to Evade or Defeat Tax.—Section 7201 (relating to attempt to evade or defeat tax) is amended by striking out "$10,000" and inserting in lieu thereof "$100,000 ($500,000 in the case of a corporation)".

(b) Willful Failure to File Return, Supply Information, or Pay Tax.—Section 7203 (relating to willful failure to file return, supply information, or pay tax) is amended by striking out "$10,000" and inserting in lieu thereof "$25,000 ($100,000 in the case of a corporation)".

(c) Fraud and False Statements.—Section 7206 (relating to fraud and false statements) is amended by striking out "$5,000" and inserting in lieu thereof "$100,000 ($500,000 in the case of a corporation)".

(d) Fraudulent Returns, Statements, or Other Documents.—Section 7207 (relating to fraudulent returns, statements, or other documents) is amended by striking out "$1,000" each place it appears and inserting in lieu thereof "$10,000 ($50,000 in the case of a corporation)".

(e) Effective Date. – The amendments made by this section shall apply to offenses committed after the date of the enactment of this Act.

* * * * *

SUBTITLE D – ADMINISTRATIVE SUMMONS

SEC. 331. SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.

(a) Proceeding To Quash. – Paragraph (2) of section 7609(b) (relating to right to intervene; right to stay compliance) is amended to read as follows:

"(2) Proceeding to quash. –

"(A) In general. – Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.

"(B) Requirement of notice to person summoned and to secretary. – If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

"(C) Intervention; etc. – Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding)."

(b) Restriction on Examination. – Subsection (d) of section 7609 (relating to restriction on examination of records) is amended to read as follows:

"(d) Restriction on Examination of Records. – No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made –

"(1) before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or

"(2) where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash."

(c) Jurisdiction. – Subsection (h) of section 7609 (relating to jurisdiction of district court) is amended to read as follows:

"(h) Jurisdiction of District Court; Etc. –

"(1) Jurisdiction. – The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

"(2) Special rule for proceedings under subsections (f) and (g). – The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely on the petition and supporting affidavits.

"(3) Priority.—Except as to cases the court considers of greater importance, a proceeding brought for the enforcement of any summons, or a proceeding under this section, and appeals, takes precedence on the docket over all other cases and shall be assigned for hearing and decided at the earliest practicable date."

(d) Conforming Amendments.—

(1) Paragraph (1) of section 7609(a) is amended—

(A) by striking out "14th day" and inserting in lieu thereof "23rd day", and

(B) by striking out the last sentence and inserting in lieu thereof the following: "Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons."

(2) The subsection heading for subsection (b) of section 7609 is amended to read as follows:

"(b) Right To Intervene; Right To Proceeding To Quash.—".

(e) Effective Date.—The amendments made by this section shall apply to summonses served after December 31, 1982.

SEC. 322. DUTY OF THIRD-PARTY RECORDKEEPER.

(a) General Rule.—Section 7609 (relating to special procedures for third-party summonses) is amended by adding at the end thereof the following new subsection:

(i) Duty of Third-Party Recordkeeper.—

"(1) Recordkeeper must assemble records and be prepared to produce records.—On receipt of a summons described in subsection (c), the third-party recordkeeper shall proceed to assemble the records requested, or such portion thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

"(2) Secretary may give recordkeeper certificate.—The Secretary may issue a certificate to the third-party recordkeeper that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period, or that the taxpayer consents to the examination.

"(3) Protection for recordkeeper who discloses.—Any third-party recordkeeper, or agent or employee thereof, making a disclosure of records pursuant to this section in good-faith reliance on the certificate of the Secretary or an order of a court requiring production of records shall not be liable to any customer or other person for such disclosure."

(b) Effective Date—The amendment made by subsection (a) shall apply to summonses served after December 31, 1982.

SEC. 333. LIMITATION ON USE OF ADMINISTRATIVE SUMMONS.

(a) In General.—Section 7602 (relating to examination of books and witnesses) is amended by striking out "For the purpose" and inserting in lieu thereof "(a) Authority to Summon, Etc.—For the purpose" and by adding at the end thereof the following new subsections:

"(b) Purpose May Include Inquiry Into Offense.—The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) included the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

"(c) No Administrative Summons When There Is Justice Department Referral.—

"(1) Limitation of authority.—No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

"(2) Justice department referral in effect.—For purposes of this subsection—

"(A) In general.—A Justice Department referral is in effect with respect to any person if—

"(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

"(ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

"(B) Termination.—A Justice Department referral shall cease to be in effect with respect to a person when—

"(i) the Attorney General notifies the Secretary, in writing, that—

"(I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,

"(II) he will not authorize a grand jury investigation of such person with respect to such an offense, or

"(III) he will discontinue such a grand jury investigation,

"(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person, or

"(iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request described in subparagraph (A)(ii).

"(3) Taxable years etc., treated separately.—For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately."

(b) Effective Date.—The amendments made by the subsection (a) shall take effect on the day after the date of the enactment of this Act.

* * * * *

SUBTITLE G—MODIFICATION OF INTEREST PROVISIONS

SEC. 344. INTEREST COMPOUNDED DAILY.

(a) In General.—Subchapter C of chapter 67 (relating to determination of rate of interest) is amended by adding at the end thereof the following new section:

"SEC. 6622. INTEREST COMPOUNDED DAILY.

"(a) General Rule.—In computing the amount of any interest required to be paid under this title of sections 1961(c)(1) or 2411 of title 28, United States Code, by the Secretary or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

"(b) Exception for Penalty for Failure To File Estimated Tax.—Subsection (a) shall not apply for purposes of computing the amount of any addition to tax under section 6654 or 6655."

(b) Conforming Amendments.—

(1) Section 6601(e) (relating to applicable rules) is amended by striking out paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) The table of sections for subchapter C of chapter 67 is amended by inserting after section 6621 the following new item:

"Sec. 6622. Interest compounded daily."

(3)(A) The heading for subchapter C of chapter 67 is amended by inserting "; Compounding of Interest" after "Rate".

(B) The item relating to subchapter C in the table of subchapters for chapter 67 is amended by inserting "; compounding of interest" after "rate".

(c) Effective Date.—The amendments made by this section shall apply to interest accruing after December 31, 1982.

Sec. 345. Determination of Rate of Interest to be Made Semiannually.

(a) In General.—Subsection (b) of section 6621 (relating to determination of rate of interest) is amended to read as follows:

"(b) Adjustment of Interest Rate.—

"(1) Establishment of adjusted rate.—If the adjusted prime rate charged by banks (rounded to the nearest full percent)—

"(A) during the 6-month period ending on September 30 of any calendar year, or

"(B) during the 6-month period ending on March 31 of any calendar year,

differs from the interest rate in effect under this section on either such date, respectively, then the Secretary shall establish, within 15 days after the close of the applicable 6-month period, an adjusted rate of interest equal to such adjusted prime rate.

"(2) Effective date of adjustment.—Any adjusted rate of interest established under paragraph (1) shall become effective—

"(A) on January 1 of the succeeding year in the case of an adjustment attributable to paragraph (1)(A), and

"(B) on July 1 of the same year in the case of an adjustment attributable to paragraph (1)(B)."

(b) Effective Date.—The amendment made by this section shall apply to adjustments taking effect on January 1, 1983.

Sec. 346. Restrictions on Payment of Interest for Certain Periods.

(a) Interest With Respect to Delinquent Returns.—Section 6611(b) (relating to period for which interest on refunds is paid) is amended by adding at the end thereof the following new paragraph:

"(3) Late returns.—Notwithstanding paragraph (1) or (2) in the case of a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed."

(b) No Interest if Return Not in Processible Form.—Section 6611 (relating to interest on overpayments) is amended by redesignating subsection (i) as subsection (j) and by adding after subsection (h) the following new subsection:

"(i) No Interest Until Return in Processible Form.—

"(1) For purposes of subsections (b)(3), (e), and (h), a return shall not be treated as filed until it is filed in processible form.

"(2) For purposes of paragraph

(1), a return is in a processible form if—

"(A) such return is filed on a permitted form, and

"(B) such return contains—

"(i) the taxpayer's name, address, and identifying number and the required signature, and

"(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return."

* * * * *

(d) Effective Dates.—

(1) In general.—The amendments made by subsections (a) and (b) shall apply to returns filed after the 30th day after the date of the enactment of this Act.

* * * * *

SUBTITLE I—OTHER PROVISIONS

* * * * *

SEC. 356. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) In General.—Subsection (i) of section 6103 (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by redesignating paragraph (6) as paragraph (7) and by striking out paragraphs (1), (2), (3), (4), and (5) and inserting in lieu thereof the following:

"(1) Disclosure of returns and return information for use in criminal investigations.—

"(A) In general.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency who are personally and directly engaged in—

"(i) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party,

"(ii) any investigation which may result in such a proceeding, or

"(iii) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party,

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

"(B) Application for order.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (A). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

"(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed,

"(ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and

"(iii) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

"(2) Disclosure of return information other than taxpayer return information for use in criminal investigations.—

"(A) In general.—Except as provided in paragraph (6), upon receipt by the Secretary of a request which meets the requirements of subparagraph (B) from the head of any Federal agency or the Inspector General thereof, or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency who are personally and directly engaged in—

"(i) preparation for any judicial or administrative proceeding described in paragraph (1)(A)(i),

"(ii) any investigation which may result in such a proceeding, or

"(iii) any grand jury proceeding described in paragraph (1)(A)(iii),

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

"(B) Requirements.—A request meets the requirements of this subparagraph if the request is in writing and sets forth—

"(i) the name and address of the taxpayer with respect to whom the requested return information relates;

"(ii) the taxable period or periods to which such return information relates;

"(iii) the statutory authority under which the proceeding or investigation described in subparagraph (A) is being conducted; and

"(iv) the specific reason or reasons why such disclosure is, or may be, relevant to such proceeding or investigation.

"(C) Taxpayer identity.—For purposes of this paragraph, a taxpayer's identity shall not be treated as taxpayer return information.

"(3) Disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances.—

"(A) Possible violations of federal criminal law.—

"(i) In general.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcing such law. The head of such agency may disclose such return information to officers and employees of such agency to the extent necessary to enforce such law.

"(ii) Taxpayer identity.—If there is return information (other than taxpayer return information) which may constitute evidence of a violation by any taxpayer of any Federal criminal law (not involving tax administration), such taxpayer's identity may also be disclosed under clause (i).

"(B) Emergency circumstances.—

"(i) Danger of death or physical injury.—Under circumstances involving an imminent danger of death or physical injury to any individual, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal or State law enforcement agency of such circumstances.

"(ii) Flight from federal prosecution.—Under circumstances involving the imminent flight of any individual from Federal prosecution, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency of such circumstances.

"(4) Use of certain disclosed returns and return information in judicial or administrative proceedings.—

"(A) Returns and taxpayer return information.—Except as provided in subparagraph (c), any return or taxpayer return information obtained under paragraph (1) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party—

"(i) if the court finds that such return or taxpayer return information is probative of a matter in issue relevant in establishing the commission of a crime or the guilt or liability of a party, or

"(ii) to the extent required by order of the court pursuant to section 3500 of title 18, United States Code, or rule 16 the Federal Rules of Criminal Procedure.

"(B) Return information (other than taxpayer return information).—Except as provided in subparagraph (C), any return information (other than taxpayer return information) obtained under paragraph (1), (2), or (3)(A) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party.

"(C) Confidential informant; impairment of investigations.—No return or return information shall be admitted into evidence under subparagraph (A)(i) or (B) if the Secretary determines and notifies the Attorney General or his delegate or the head of the Federal agency that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation.

"(D) Consideration of confidentiality policy. — In ruling upon the admissibility of returns or return information, and in the issuance of an order under subparagraph (A)(ii), the court shall give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

"(E) Reversible error. — The admission into evidence of any return or return information contrary to the provisions of this paragraph shall not, as such, constitute reversible error upon appeal of a judgment in the proceeding.

"(5) Disclosure to locate fugitives from justice. —

"(A) In general. — Except as provided in paragraph (6), the return of an individual or return information with respect to such individual shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency exclusively for use in locating such individual.

"(B) Application for order. — Any person described in paragraph (1)(B) may authorize an application to a Federal district court judge or magistrate for an order referred to in subparagraph (A). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that —

"(i) a Federal arrest warrant relating to the commission of a Federal felony offense has been issued for an individual who is a fugitive from justice,

"(ii) the return of such individual or return information with respect to such individual is sought exclusively for use in locating such individual, and

"(iii) there is reasonable cause to believe that such return or return information may be relevant in determining the location of such individual.

"(6) Confidential informants; impairment of investigations. — The Secretary shall not disclose any return or return information under paragraph (1), (2), (3)(A), (5), or (7) if the Secretary determines (and, in the case of a request for disclosure pursuant to a court order described in paragraph (1)(B) or (5)(B), certifies to the court) that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation".

(b) Conforming Amendments. —

(1) Subsection (p) of section 6103 (relating to procedure and recordkeeping) is amended —

(A) by striking out "(6)(A)(ii)" in paragraph (3)(A) and inserting in lieu thereof "(7)(A)(ii)",

(B) by striking out "(d)" in paragraph (3)(C)(i) and inserting in lieu thereof "(d), (i)(3)(B)(i),",

(C) by striking out "such requests" in paragraph (3)(C)(i)(II) and inserting in lieu thereof "such requests or otherwise",

(D) by striking out "(i)(1), (2), or (5)" each place it appears in paragraph (4) and inserting in lieu thereof "(i)(1), (2), (3), or (5)",

(E) by striking out "(d)" each place it appears in paragraph (4) and inserting in lieu thereof "(d), (i)(3)(B)(i),", and

(F) by striking out "subsection (i)(6)(A)(ii)" in paragraph (6) (B)(i) and inserting in lieu thereof "subsection (i)(7)(A)(ii)".

(2) Paragraph (2) of section 7213(a) (relating to unauthorized disclosure of information) is amended by striking out "(d)" and inserting in lieu thereof "(d), (i)(3)(B)(i),".

(c) Effective Date. – The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

Sec. 357. Civil Damages Against United States for Unauthorized Disclosures by an Employee.

(a) In General. – Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7431 as section 7432 and inserting after section 7430 the following new section:

"Sec. 7430. Civil Damages for Unauthorized Disclosure of Returns and Return Information.

"(a) In General. –

"(1) Disclosure by Employee of United States. – If any officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

"(2) Disclosure by a person who is not an employee of United States. – If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

"(b) No Liability for Good Faith but Erroneous Interpretation. – No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103.

"(c) Damages. – In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of –

"(1) the greater of –

"(A) $1,000 for each act of unauthorized disclosure of a return or return information with respect to which such defendant is found liable, or

"(B) the sum of –

"(i) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure, plus

"(ii) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, plus

"(2) the costs of the action.

"(d) Period for Bringing Action. – Nothwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery to the plaintiff of the unauthorized disclosure.

"(e) Return; Return Information. – For purposes of this section, the terms 'return' and 'return information' have the respective meanings given such terms in section 6103(b)."

(b) Conforming Amendments. –

(1) Section 7217 (relating to civil damages for unauthorized disclosure of returns and return information) is hereby repealed.

(2) The table of sections for part I of subchapter A of chapter 75 is

amended by striking out the item relating to section 7217.

(3) The table of sections for subchapter B of chapter 76 is amended by striking out the item relating to section 7431 and inserting in lieu thereof the following:

"Sec. 7431. Civil damages for unauthorized disclosure of returns and return information.

"Sec. 7432. Cross references."

(c) Effective Date. – The amendments made by this section shall apply with respect to disclosures made after the date of enactment of this Act.

SEC. 358. DISCLOSURE FOR USE IN CERTAIN AUDITS BY GENERAL ACCOUNTING OFFICE.

(a) In General. – Paragraph (7) of section 6103(i) (relating to disclosure to Comptroller General), as redesignated by section 396(a), is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) Audits of other agencies. –

"(i) In general. – Nothing in this section shall prohibit any return or return information obtained under this title by any Federal agency (other than an agency referred to in subparagraph (A)) for use in any program or activity from being open to inspection by, or disclosure to, officers and employees of the General Accounting Office if such inspection or disclosure is –

"(I) for purposes of, and to the extent necessary in, making an audit authorized by law of such program or activity, and

"(II) pursuant to a written request by the Comptroller General of the United States to the head of such Federal agency.

"(ii) Information from secretary. – If the Comptroller General of the United States determines that the returns or return information available under clause (i) are not sufficient for purposes of making an audit of any program or activity of a Federal agency (other than an agency referred to in subparagraph (A)), upon written request by the Comptroller General to the Secretary, returns and return information (of the type authorized by subsection (l) or (m) to be made available to the Federal agency for use in such program or activity) shall be open to inspection by, or disclosure to, officers and employees of the General Accounting Office for the purpose of, and to the extent necessary in, making such audit.

"(iii) Requirement of notification upon completion of audit. – Within 90 days after the completion of an audit with respect to which returns or return information were opened to inspection or disclosed under clause (i) or (ii), the Comptroller General of the United States shall notify in writing the Joint Committee on Taxation of such completion. Such notice shall include –

"(I) a description of the use of the returns and return information by the Federal agency involved,

"(II) such recommendations with respect to the use of returns and return information by such Federal agency as the Comptroller General deems appropriate, and

"(III) a statement on the impact of any such recommendations on confidentiality of returns and return information and the administration of this title.

"(iv) Certain restrictions made applicable. – The restrictions contained in subparagraph (A) on the disclosure of any returns or return information open to inspection or disclosed under such subparagraph shall also apply to returns and return information open to inspection or disclosed under this subparagraph."

(b) Conforming Amendments. –

(1) Subparagraph (A) of section 6103(i)(7) of such Code (as redesignated by this Act) is mended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraph (C)".

(2) Subparagraph (C) of section 6103(i)(7) of such Code (as redesignated by this Act) is amended by striking out "subparagraph (A)" and inserting in lieu thereof "subparagraph (A) or (B)".

(c) Effective Date. – The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

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Approved September 3, 1982.

Subpart B—Committee Reports

House Conference Report
No. 97-760
97th Congress
2d Session

TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

August 17, 1982

Mr. Rostenkowski, from the committee of conference, submitted the following Conference Report to accompany H.R. 4961.[1]

* * * * *

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4961) to make miscellaneous changes in the tax laws, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

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PART TWO
REVENUE PROVISIONS

* * * * *

TITLES II, III AND IV—REVENUE PROVISIONS

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[1] Public Law 97-248, page ; House Report No. 97-404 and Senate Report No 97-494 are not published.

C. Compliance Provisions

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2. Other compliance provisions

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g. Increase in civil penalty on failure to supply identifying numbers

Present law

Present law imposes a penalty of $5 per failure on any person who is required by regulations (1) to include his taxpayer identification number (TIN) in any return, statement or document, (2) to furnish his TIN to another person, or (3) to include in any return or statement made with respect to another person the TIN of such other person, and who fails to comply with such requirement at the time prescribed. The penalty is not imposed if the failure is due to reasonable cause and not due to willful neglect.

House bill

No provision.

Senate amendment

The penalty for failure to supply identifying numbers is increased from $5 per failure to $50 per failure, but not to exceed $50,000 for all such failures in any calendar year. In addition, the bill provides that if any failure to include the TIN of another person in any return or statement made with respect to that other person is due to the intentional disregard of the requirements to include such other person's TIN in the return, the penalty will be $100 per failure and the $50,000 limitation will not apply.

The provision will be effective for returns the due date of which (without extensions) is after December 31, 1982.

Conference agreement

The conference agreement follows the Senate amendment except that (1) the penalty for failure to include the taxpayer's own TIN in any return, statement, or document is not increased, but is kept at $5 for each such failure (instead of $50) and (2) there is no additional penalty for intentional disregard of the requirement to include another person's TIN in a return.

* * * * *

o. Penalty for aiding and abetting the understatement of tax liability

Present law

Present law provides a criminal penalty for willfully aiding in the preparation or presentation of a false or fraudulent return, or other document under the internal revenue laws. The penalty is a fine of up to $5,000 or 3 years imprisonment, or both, together with costs. There is no comparable civil penalty on persons who aid in the preparation of false or fraudulent documents. Income tax return preparers who willfully attempt to understate the liability for tax of any person are subject to a penalty of $500 per return.

House bill

No provision.

Senate amendment

The Senate amendment would provide for a new civil penalty on any person who aids in the preparation or presentation of any portion of a return or other document under the internal revenue laws which the person knows will be used in connection with any material matter arising under the tax laws, and which the persons knows will (if used) result in any understatement of the tax liability of another person.

This penalty would be $1,000 for each return or other document ($5,000 in the case of returns and documents relating to the tax of a corporation).

In general, under the Senate amendment, this penalty would be in addition to all other penalties provided by law. However, if the return preparer penalties for negligence or intentional disregard of rules or regulations, or for willful attempt to understate the tax liability of any person, could apply with respect to any document, this new penalty would not apply with respect to such document.

This provision would be effective on the day after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with two modifications. First, the amount of the penalty with respect to documents relating to corporate tax liability is increased to $10,000 (from $5,000). Second the coordination between this penalty and the return preparer penalty is altered by allowing the Internal Revenue Service to choose which penalty it will assert if both may apply to a particular set of facts. Thus, this penalty will not apply if a return preparer penalty is actually assessed with respect to a document otherwise subject to this penalty.

p. Fraud penalty

Present law

Under present law, if any portion of an underpayment of tax is due to fraud, a civil penalty is imposed (as an addition to tax) equal to 50 percent of the entire underpayment. If part of an underpayment is attributable to negligence or intentional disregard of rules and regulations, the penalty under present law is equal to 5 percent of the entire underpayment plus 50 percent of interest payable on the portion of the underpayment attributable to negligence or disregard of rules and regulations for the period beginning on the last date prescribed for payment of the tax and ending on the date of assessment of the tax.

In the case of the windfall profit tax, both the negligence and the fraud penalty may apply to the same underpayment.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement conforms the civil fraud penalty to the negligence penalty by providing that in addition to the 50 percent fraud penalty on the entire underpayment, there is a penalty equal to 50 percent of the interest payable on the portion of the underpayment attributable to fraud for the period beginning on the last date prescribed for payment of the tax (without regard to any extension), and ending on the earlier of the date of assessment or the date of payment of the tax. Under the conference agreement, the negligence penalty does not apply in any case in which the fraud penalty has been assessed.

Finally, the conference agreement provides that when a joint return is filed, the interest addition does not apply with respect to the spouse's tax unless some part of the underpayment was due to the spouse's fraud.

The amendment applies to taxes the last day for payment of which (without regard to any extension) is after the date of enactment.

* * * * *

r. Criminal fines

Present law

(1) Under present law, any person and willfully attempts to evade or defeat any tax or the payment thereof is guilty of a felony and, if convicted, may be fined not more than $10,000 or imprisoned for not less than 5 years, or both.

(2) Any person who is required to pay any tax or estimated tax or keep

records or report information and willfully fails to do so is guilty of a misdemeanor and is punishable by a fine of not more than $10,000 or imprisonment for not more than 1 year, or both.

(3) Any person who willfully files a false declaration under penalty of perjury, aids or assists in the preparation of a false or fraudulent document; falsely executes any document under the internal revenue laws; conceals goods, etc., to evade or defeat any tax; or does certain other acts, is guilty of a felony and upon conviction may be fined not more than $5,000 or imprisoned for not more than 3 years, or both.

(4) Any person who willfully delivers any false or fraudulent document to the Secretary, or does certain other acts, is guilty of a misdemeanor and may be fined not more than $1,000 or imprisoned for one year, or both.

* * * * *

u. Special procedures for third-party summonses and third-party recordkeepers

Present law

Under present law, if an administrative summons is served on a third-party recordkeeper, then notice of the summons must also be given to the person whose records have been summoned (i.e., the taxpayer). The taxpayer can stay compliance with a third-party summons by notifying the recordkeeper in writing not to comply with the summons. To enforce the summons, the Secretary must then seek an order of a United States District Court compelling compliance.

House bill

No provision.

Senate amendment

Under the amendment, a taxpayer whose records are summoned and who wishes to prevent compliance with the summons by the recordkeeper, would be required to begin a civil action in court to quash the summons not later than the 20th day after the day notice of the summons is given. No examination of the summoned records would be allowed before the close of the 23rd day after notice were given, or, if the proceeding to quash were begun, until the court so orders. As under current law, the ultimate burden of persuasion with respect to his right to enforce the summons would remain on the Secretary.

The bill would require third-party recordkeepers to proceed to assemble summoned records upon receipt of the summons and to be prepared to produce the records on the date specified for their examination. Such recordkeepers would be entitled to reimbursement for their costs under section 7610 regardless of whether the summons is enforced.

The provisions would apply with respect to summonses initially served after December 31, 1982.

Conference agreement

The conference agreement follows the Senate amendment with the clarification that when a proceeding to quash the summons is begun, the Secretary may also examine the summoned records of the taxpayer whose records are summoned consents.

v. Limitation on use of administrative summonses

Present law

Under present law, the Secretary may issue summonses for the purpose of determining liability for taxes due under the internal revenue laws unless the Internal Revenue Service has institutionally abandoned its civil tax case.

House bill

No provision.

Senate amendment

Under the amendment, the Secretary could not issue any summons or commence any action to enforce a summons if a Justice Department referral were in effect with respect to the person whose tax liability is in issue. The amendment would provide that the purposes for which an administrative summons may be issued include the right to inquire into any offense connected with the administration or enforcement of the Internal Revenue laws.

This provision would be effective the day after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

* * * * *

gg. Daily compounding of interest

Present law

Under present law, interest payable to or by the United States under the internal revenue laws is not compounded.

House bill

No provision.

Senate amendment

All interest payable under the internal revenue laws would be compounded daily. The change would also affect any other amounts computed by reference to the interest rate provided for in the Code.

This compounding requirement would apply to interest accruing after December 31, 1982, on amounts (including interest) remaining unpaid after that date.

Conference agreement

The Conference agreement follows the Senate amendment except that daily compounding is not required for purposes of the penalties on failure to pay estimated taxes. In a case in which the principal portion of an obligation is satisfied, and interest remains outstanding, such interest will, of course, be compounded.

hh. Semi-annual determination of rate of interest

Present law

Under present law, the rate of interest paid on underpayments, overpayments, and for certain other purposes under the internal revenue laws is determined once a year based on September's average predominant prime rate.

House bill

No provision.

Senate amendment

Under the amendment, interest rates would be redetermined twice a year on the basis of the average adjusted prime rate charged by commercial banks during the six-month period ending September 30 (effective January 1 of the succeeding calendar year), and March 31 (effective July 1 of the same calendar year).

The amendment would be effective for adjustments taking effect after December 31, 1982.

Conference agreement

The conference agreement follows the Senate amendment.

ii. Restrictions on payment of interest for certain periods

Present law

In general, under present law, interest on refunds, credits, and offsets runs from the date of overpayment or (in the case of a credit) to the due date of the amount against which the credit is taken. An overpayment resulting from a net operating loss carryback, net capital loss carryback, or credit carryback is treated as having occurred at the close of the year in which the carryback arose.

In the case of an underpayment of tax, interest runs from the last date prescribed for payment of the tax without regard to extensions, to the date the tax is paid. If there is an underpayment of tax for any taxable year, and the amount of the underpayment is reduced by reason of the carryback of a net operating loss, net capital loss, or because of the increase in any credit for the taxable year because of a credit carryback from another taxable year, such reduction is not effective for any period prior to the last day of the taxable year in which the net operating loss, the net capital loss, or credit carryback arises.

House bill

No provision.

Senate amendment

Under the Senate amendment, the general rule with respect to the payment of interest on overpayments is unchanged when the credit or refund is claimed in a timely filed return. However, when the return is late because it is filed after the due date (determined with regard to extensions) no interest is payable on the overpayment for any period prior to the date on which the return is filed. For this purpose, and for purposes of determining whether a refund has been made within 45 days after the return is filed, no return is treated as filed until filed in processible form.

Under the Senate amendment, an overpayment due to a net operating loss or a net capital loss carryback, or a credit carryback is deemed not to arise before the application for tentative carryback adjustment is made, or the claim for credit or refund is filed with respect to such overpayment.

Conference agreement

Due to considerations relating to the treatment of offsets (for example, in audit situations) the conferees decided to revise the provisions of the Senate amendment dealing with restrictions on payments of interest on certain refunds. Under the agreement an overpayment resulting from a net operating loss carryback, a net capital loss carryback, or credit carryback would be treated as having occurred on the due date (without extensions) of the return for the year in which the carryback arose. In the case of a refund, the return for the loss year would be treated as not filed prior to the time the claim for refund therefor is filed. Under the conference agreement, no interest would be paid on a refund claimed on a late return if the refund is made within 90 days after the return is filed.

Conforming amendments would be made in the rules relating to interest on underpayments.

Under the bill, for purposes of the payment of interest on overpayments, a return would not be treated as filed until it is filed in processible form.

The provisions regarding late returns and processible returns would be effective for returns filed after the 30th day after the date of enactment. The provision regarding interest overpayments due to carrybacks would be applicable to interest accruing 30 days after enactment.

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G. Excise Tax Provisions

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2. Increase in cigarette excise taxes

Present law

A manufacturers excise tax equal to $4 per thousand (8 cents per pack) is imposed on small cigarettes (i.e., cigarettes weighing no more than three pounds per thousand). Generally, a tax equal to $8.40 per thousand is imposed on large cigarettes, except that higher rates apply to large cigarettes that exceed 6.5 inches in length.

House bill

No provision.

Senate amendment

The manufacturers excise taxes on small and large cigarettes are doubled effective for cigarettes removed after December 31, 1982, and before October 1, 1985. A floor stocks tax equal to the excess of the new tax rates over the pre-1983 rates is imposed on cigarettes held for sale on January 1, 1983, by any person other than a retailer. The floor stocks tax must be paid on or before January 18, 1983.

Conference agreement

The conference agreement follows the Senate amendment; however, the conferees desire to clarify their intent regarding the interpretation of two rules of the floor stocks tax applicable to cigarettes removed before January 1, 1983, and held for sale on that date.

The conferees intend that the exemption from the floor stocks tax for cigarettes held for sale by retailers apply only to cigarettes held at the location where they are normally sold to consumers. For example, cigarettes held for sale on the shelves of a retail store will be exempt as held by a retailer, but cigarettes held in warehouses or other similar facilities where retail consumers do not have regular access to them are not to be treated as held by a retailer.

The conferees further understand that financial hardship could result in some circumstances if payment of the entire floor stocks tax were required on or before January 18, 1983. It is the intent of the conferees that the Treasury Department exercise its present authority over establishment of the time and method for paying cigarette excise taxes to permit extensions of time of up to 30 days for payment of the floor stocks tax in circumstances where the taxpayer demonstrates that financial hardship would result from payment of the tax on the date otherwise prescribed.

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H. Other Provisions

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6. Disclosure of Tax Returns

a. Disclosure of tax return information for nontax criminal investigation purposes

Present law

Overview

Tax returns and taxpayer return information (i.e., return information submitted to the Internal Revenue Service (IRS) by the taxpayer or his representative) may be disclosed for Federal nontax criminal investigation purposes only on the grant of an ex parte order by a Federal district court judge. Return information that is submitted to the IRS by someone other than the taxpayer or his representative may be secured on written request by certain officers and employees of the Federal government. The IRS, in certain circumstances, may disclose return information on its own initiative.

Disclosure pursuant to court order

Returns and taxpayer return information may be disclosed by the IRS to personnel of other Federal agencies for nontax criminal investigation purposes only on the grant of an ex parte order by a Federal district court judge.

Personnel to whom tax information may be disclosed

Tax information may be disclosed only to officers and employees of a Federal agency who are personally and directly engaged in the preparation for any administrative or judicial proceeding (or any investigation that may result in such a proceeding) pertaining to the enforcement of a Federal nontax criminal statute.

Individuals who may authorize an application for court-ordered disclosure

The following individuals may authorize the application for a court order: the head of a Federal agency, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General.

Court order standards

A Federal district court judge may grant an order for disclosure if the judge determines that:

(1) There is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(2) There is reason to believe that the return or return information is probative evidence of a matter in issue related to the commission of such criminal act; and

(3) The information sought to be disclosed cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the return or return information sought consitutes the most probative evidence of a matter in issue relating to the commission of such criminal act.

Application for disclosure of return information other than taxpayer return information

The head of any Federal agency, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may obtain return information (other than taxpayer return information) by written request to the IRS. (This category of information is tax information that the IRS has received from someone other than the taxpayer under investigation or his representative.)

Contents of application

A request for return information (other than taxpayer return information) must set forth, among other information, the specific reason or reasons why the disclosure is or may be material to the proceeding or investigation.

Taxpayer identifying information

The name and address of a taxpayer may be disclosed, pursuant to written request, for use in a nontax criminal investigation.

Disclosure of return information (other than taxpayer return information) to apprise appropriate officials of possible criminal activities

Return information (other than taxpayer return information) that may constitute evidence of a violation of Federal criminal laws may be disclosed by the IRS to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcement of such laws.

Under this provision, the taxpayer's identity may be disclosed if there is return information (other than taxpayer return information) that may constitute evidence of a violation of Federal criminal laws.

Use of tax information in administrative or judicial proceedings

In general, returns or return information disclosed by the IRS to a Federal agency may be entered into evidence in any administrative or judicial proceeding pertaining to enforcement of a nontax Federal criminal statute. A return or return information that was disclosed pursuant to a court order may be entered into evidence only if the court finds that it is probative of a matter in issue relevant in establishing the commission of a crime or the guilt of a party.

House bill

No provision. However, H.R. 6475 (as ordered reported by the Committee on Ways and Means) is identical to the Senate amendment.

Senate amendment

Overview

The primary changes made by the Senate amendment include: (1) the modification of the standards for the granting of an ex parte order for the disclosure of tax returns and return information and allowing Federal district court magistrates to issue those orders; (2) an expansion in the number of personnel who would be permitted to request disclosure; (3) new authority allowing court-ordered disclosure of return information for purposes of locating Federal fugitives from justice; and (4) new authority for the IRS to disclose return information, on its own initiative, in emergency circumstances.

The provisions take effect on the day after the date of enactment.

Disclosure pursuant to court order

The Senate amendment allows a Federal district court magistrate, as well as a Federal district court judge, to grant an ex parte order for the disclosure of returns or return information.

Personnel to whom tax information may be disclosed

The Senate amendment expands the category of personnel to whom disclosure can be made to include officers and employees of a Federal agency who are personally and directly engaged in any Federal grand jury proceeding pertaining to enforcement of a Federal nontax criminal statute.

Individuals who may authorize an application for court-ordered disclosure

The Senate amendment eliminates the authority of Federal agency heads (other than the Attorney General) to authorize disclosure applications. However, the number of individuals within the Department of Justice who can authorize applications is expanded to include: the Associate Attorney General, any United States Attorney, any special prosecutor, and any attorney in charge of a criminal division organized crime strike force.

Court order standards

Under the Senate amendment, a Federal district court judge or magistrate may grant an order for disclosure of tax returns or return information if the judge or magistrate determines that:

(1) There is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(2) There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and

(3) The return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

With respect to the third standard, it would not be reasonable to obtain tax information from another source if, for example, the information cannot be obtained in an expeditious manner in a case where time is an essential factor, or if an attempt to obtain the information elsewhere would seriously impair a criminal investigation or proceeding.

Disclosure to locate Federal fugitives from justice

Persons who may authorize an application for court-ordered disclosure will be permitted also to authorize an application for the disclosure of returns and return information solely for the purpose of locating fugitives.

A Federal district court judge or magistrate may authorize a disclosure order if the judge or magistrate determines that:

(1) A Federal arrest warrant relating to the commission of a Federal felony offense has been issued for an individual who is a fugitive from justice;

(2) The return of such individual or return information with respect to such individual is sought exclusively for use in locating such individual; and

(3) There is reasonable cause to believe that such return or return information may be relevant in determining the location of such individual.

It is intended that this provision will be used to locate fugitives who are considered to be violent or dangerous or who pose a substantial threat to society.

Application for disclosure of return information other than taxpayer return information

The Senate amendment expands the number of individuals who can authorize a written request for disclosure to include the Inspector General of any Federal agency, the Associate Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States Attorney, any special prosecutor, and any attorney in charge of a criminal division organized crime strike force.

Contents of application

A request for return information (other than taxpayer return information) must set forth, among other information, a showing of the specific reason or reasons why the disclosure is or may be relevant to (rather than material to) the proceeding or investigation.

Taxpayer identifying information

A taxpayer's social security number, as well as the taxpayer's name and address, may be disclosed, pursuant to written request, for use in a nontax criminal investigation.

It is intended that taxpayer identity information be treated as taxpayer return information unless return information (other than taxpayer identity information) is requested and disclosed pursuant to such written request.

Disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances

The IRS is provided with additional authority to disclose return information (including taxpayer return information) in certain emergency circumstances.

Specifically, under circumstances involving an imminent danger of death or physical injury to any individual, the IRS is permitted to disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal or State law enforcement agency of such circumstances. Furthermore, under circumstances involving the imminent flight of any individual from Federal prosecution, the IRS may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency of such circumstances.

Such disclosures will be subject to the safeguard and annual reporting requirements of section 6103(p). Moreover, it is intended the IRS utilize its disclosure authority in an efficient and effective manner. The provision relating to imminent flight from Federal prosecution is intended to cover individuals who could be prosecuted for flight from presecution, as a separate Federal offense, and circumstances where an individual has attempted to change identity or intends to flee from the country.

Use of tax information in judicial or administrative proceedings

The use of returns and return information in judicial or administrative proceedings not involving tax administration is expanded.

Specifically, this information may also be disclosed in any judicial or administrative proceeding pertaining to the enforcement of a civil forfeiture that is related to a nontax Federal criminal statute or to the extent required by court order pursuant to 18 U.S.C. sec. 3500 or rule 16 of the Federal Rules of Criminal Procedure.

Conference agreement

The conference agreement follows the Senate amendment. The purpose of these modifications to the disclosure law is to facilitate the disclosure of tax information for legitimate law enforcement needs while, at the same time, preserving the basic principle that a taxpayer's return should generally be treated as confidential and should be disclosed, in only a limited number of circumstances, where those law enforcement needs outweigh the need to preserve taxpayer confidentiality. In agreeing to these provisions, the conferees have fulfilled a commitment made by the conferees on the Economic Recovery Tax Act of 1981 to take appropriate legislative action in this area.

b. Civil damages for unauthorized disclosure of returns and return information

Present law

A person who knowingly or negligently discloses a return or return information with respect to a taxpayer, in violation of the disclosure restrictions, may be sued in a civil action for damages in a district court of the United States.

House bill

No provision. However, H.R. 6475 (as ordered reported by the Committee on Ways and Means) contains a provision that is identical to the Senate amendment.

Senate amendment

If a U.S. officer or employee knowingly or negligently discloses return information in violation of the disclosure restrictions, the wronged party will be permitted to bring a civil action for damages against the U.S. (rather than against the officer or employee). Of course, an officer or employee who makes a wrongful disclosure still will be subject to all administrative disciplinary actions as well as potential criminal sanctions.

The provision applies to disclosures made after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

c. Disclosure of returns and return information for use in certain audits by the General Accounting Office

Present law

The General Accounting Office currently has access to tax returns and return information for the purpose of conducting an audit of the Internal Revenue Service or the Bureau of Alcohol, Tobacco, and Firearms, and for the purpose of auditing the safeguards used by other agencies to safeguard returns and return information. However, before the GAO receives tax returns or return information in connection with an audit, it must notify the Joint Committee on Taxation of the audit. The Joint Committee may disapprove an audit by a vote of at least two-thirds of its members within

30 days of receipt of notice of the proposed audit.

In addition, the GAO is permitted access to returns and return information when it is acting as an agent for the Committee on Ways and Means, Committee on Finance, or Joint Committee on Taxation.

House bill

No provision. However, H.R. 6475 (as ordered reported by the Committee on Ways and Means) contains a provision that is identical to the Senate amendment.

Senate amendment

GAO access to tax returns and return information is expanded to include any returns or return information obtained by a Federal agency for use in any agency program or activity. This information will be open (upon written request) to officers and employees of the GAO, and only to the extent necessary in, auditing such program or activity. Furthermore, the GAO is permitted access to returns and return information that have not been obtained by a Federal agency in certain circumstances, provided that the agency is authorized to obtain the information for use in the program or activity that is the subject of the GAO audit. This "second-tier" access is limited to return information that may be disclosed under Code secs. 6103(l) or (m). The Internal Revenue Service may refuse to disclose tax information to the GAO if such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

The pre-audit notification procedures and Joint Committee veto authority of present law are retained. This notification should include (1) a description of the audit to be undertaken, including its scope and purpose; (2) an explanation of the use that will be made of tax information; and (3) assurance that in using tax information, and in formulating its recommendations which will result from the audit of programs that involve the use of tax information, the GAO will consider any potential impact on tax administration and taxpayer confidentiality.

In addition, within 90 days after the completion of any audit with respect to which the GAO had access to tax returns or return information, the GAO is required to notify the Joint Committee on Taxation of the completion. Such written notification will include (1) a description of the use of the returns and return information by the Federal agency involved; (2) such recommendations with respect to the use of returns and return information by the Federal agency as the Comptroller General deems appropriate; and (3) a statement of the impact of any such recommendations on the confidentiality of returns and return information and on tax administration. The GAO also is expected to notify the Joint Committee of any recommendations that will affect tax administration, directly or indirectly.

The present law authority for the GAO to gain access to tax information when it is acting as an agent for the Committee on Ways and Means, the Committee on Finance, or the Joint Committee on Taxation is retained. Moreover, the GAO may continue audit activity, which involves access to tax information, pursuant to any current agency designation, which is in process as of the date of enactment.

The provision takes effect on the day after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment. The conferees expect that before the GAO requests "second-tier" access (that is, access to return information that may be disclosed under Code secs. 6103 (l) or (m) but which has not been so disclosed), it will take into account the burdens that such access might impose upon the Internal Revenue Service.

* * * * *

15. Award of reasonable litigation costs where taxpayer prevails and government position was unreasonable

Present law

a. Attorneys fees

A taxpayer who prevails in civil tax litigation in the Federal courts (other than the U.S. Tax Court) may be awarded reasonable attorneys fees and other litigation costs, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

* * * * *

House bill

a. Attorneys fees

General rule. — A taxpayer who prevails in civil tax litigation in the Federal courts, including the U.S. Tax Court, may be awarded reasonable attorney fees and other litigation costs. The taxpayer may recover litigation costs only if the position of the United States in the case was unreasonable.

Dollar limitation on awards. — The maximum award is $50,000.

Third-party costs. — In litigation where the deductibility of contributions by a taxpayer to a charitable organization is the most significant issue, the organization (as well as the taxpayer) may recover costs incurred by it in the litigation if the taxpayer prevails, even though the charity is not a party to the action.

Effective date. — The attorneys fees provision applies to U.S. Tax Court cases begun after 1982, and to other Federal tax cases pending on, or begun after, October 1, 1981. The provision does not apply to cases begun after September 30, 1984.

* * * * *

Senate amendment

No provision. However, a similar provision is included in H.R. 4717 as passed by the Senate.

a. Attorneys fees

General rule. — Generally the same as the House bill, except that the Senate provision provides explicitly that the taxpayer has the burden of establishing that the government's position was unreasonable.

Dollar limitation on awards. — The maximum award is $25,000. There is a special rule generally requiring the joinder or consolidation of multiple actions or actions involving the same taxpayer for the purpose of awarding attorney fees.

Third-party costs. — A taxpayer may recover costs for a third party incurred by that party on behalf of the taxpayer.

Effective date. — The attorneys fees provision applies to civil tax litigation, including U.S. Tax Court cases, begun after May 31, 1982. The provision does not apply to cases begun after May 31, 1987.

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Conference agreement

a. Attorneys fees

The conference agreement follows the Senate provision, except for effective dates. The provision applies to civil tax litigation, including U.S. Tax Court cases, begun on or after March 1, 1983. The provision does not apply to cases begun after December 31, 1985.

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Administrative Matters PART V

Subpart A—Administrative and Procedural Practice Regulations

27 CFR 240.901, 245.227, 270.162: FILING AND RETENTION OF TAX RETURNS

(Also 240.902, 270.167, 285.25 and instructions on ATF Forms issued pursuant to 27 CFR Parts 19, 240, 245, 270 and 285)

Revised guidelines for filing and retention of alcohol and tobacco excise tax returns.

ATF Proc. 82-1

SECTION 1. PURPOSE

This ATF Procedure establishes revised guidelines for the filing and retention of alcohol and tobacco excise tax returns. The new guidelines reduce the number of copies required to be filed, superseding the instructions on the alcohol and tobacco tax return forms currently in circulation. Specific instructions incorporated in regulations have been deleted by Treasury decision ATF-111, published in the Federal Register of September 1, 1982 (47 FR 38521). Regulations now provide for filing in accordance with the instructions on applicable forms. The instructions on ATF tax return forms will be revised to conform to this procedure when the forms are next reprinted. These revised procedures are effective September 1, 1982.

SEC. 2. BACKGROUND

Sections 5061 and 5703, Title 26 of the United States Code, provide that alcohol and tobacco taxes shall be collected by return. ATF regulations in 27 CFR, and the forms prescribed therein, implement the statute with respect to the taxes on distilled spirits, wine, beer, tobacco products and cigarette papers and tubes.

Alcohol and tobacco taxes are administered by ATF. However, the tax returns are filed with the Internal Revenue Service (IRS), which performs a cashier function and transmits evidence of payment to ATF. Under existing procedures, multiple copies of returns have been required to be filed with IRS and ATF to provide record copies for both agencies and a receipted copy to the taxpayer (with retention of such copy specifically required for certain taxes). These requirements were deleted by T.D. ATF-111.

IRS has instructed its service centers to begin forwarding all copies of alcohol and tobacco tax returns to ATF, with full receipt data to be entered on the original return only. ATF will be modifying the instructions on its forms to reduce the number of copies filed and to delete references to retention of a receipted copy.

This ATF procedure provides interim guidance to enable taxpayers to begin realizing immediately the administrative cost savings resulting from steamlined filing requirements.

SEC. 3. CHANGES IN PROCEDURE

Taxpayers presently file an original and two copies of each tax return with their IRS District Director. Under the interim guidelines, taxpayers may file an original only. The tax return, with payment, will still be filed with the appropriate IRS office. After processing by IRS, the original returns will be forwarded to ATF.

Taypayers also file a copy of each return with the ATF Regional Regulatory Administrator at the same time as the original is filed with IRS. This requirement was terminated by T.D. ATF-111.

The net result is that tax returns now prepared in quintuplicate and filed in quadruplicate may be prepared in duplicate with only an original required to be filed. This change brings the procedures for filing alcohol and tobacco tax returns into conformity with the requirements applicable to most other Federal returns.

Retention of a copy of all returns is prescribed by ATF regulations applicable to each type of tax (19.741(a)(4); 240.924; 245.232; 270.185 and 285.31). These general requirements are unchanged under the interim guidelines, as a copy of the return is required for use in tax compliance examinations. However, the customary procedure (which had been specifically required by regulation for some returns) has been for the taxpayer to retain the IRS receipted copy that the district director or service center returned to him as the "official" record copy. Since IRS service centers will no longer be providing such copies, the regulatory requirements for retaining receipted copies have been eliminated by T.D. ATF-111. Therefore, the copy which the proprietor retains at the time of filing, previously treated as a "suspense" copy pending return of the IRS receipted copy, will be the required record copy. Taxpayers may wish to modify their internal procedures to assure that this copy is a true reproduction of the original return and that proofs of timely mailing, canceled checks or other evidence of timely payment are retained and attached to or referenced on this copy. Taxpayers who wish to continue to maintain a receipted copy have the option of delivering each return to the IRS district director and having a copy receipted.

SEC. 4. EFFECT ON OTHER DOCUMENTS

The guidelines contained in this ATF procedure supersede the requirements presently printed as instruction to ATF tax return forms.

SEC. 5. EFFECTIVE DATE

All alcohol and tobacco excise taxpayers may begin filing their tax returns in accordance with the guidelines set forth in this procedure as of September 1, 1982.

SEC. 6. INQUIRIES

Inquiries concerning this ATF Procedure should refer to its number and be addressed to the office of the appropriate Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms.

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-111

27 CFR PARTS 19, 240, 245, 270 and 285

Disposition of Tax Returns for the Payment of Alcohol and Tobacco Products Excise Taxes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends regulations with respect to the

filing and processing of tax returns for the payment of alcohol and tobacco products excise taxes. These amendments will lessen the paperwork burden on the alcohol and tobacco products excise taxpayers by reducing the number of copies of tax returns to be filed. Moreover, the function of maintaining the original excise tax return is now the sole responsibility of ATF.

The procedural changes mentioned herein impact the instructions on all distilled spirits, wine, malt beverages, and tobacco products excise tax returns.

DATED: September 1, 1982

FOR FURTHER INFORMATION CONTACT:
John A. Linthicum at 202-566-7602 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Policy

The regulations are being amended to limit the filing and processing of excise tax returns to one original tax return in order (1) to minimize the Federal paperwork burden on the alcohol and tobacco products excise taxpayers and (2) to minimize the cost to the Federal Government of processing these excise tax returns.

Background

All alcohol and tobacco products excise taxes shall be collected by return as provided in 26 U.S.C. 5061 and 5703. The tax returns covering alcohol and tobacco products excise taxes are filed with the Internal Revenue Service (IRS) which performs a cashier function and transmits evidence of taxpayment to ATF. The regulations in 27 CFR Chapter I and the forms prescribed therein reflect these requirements.

Objectives

Prior to this final rule, all alcohol and tobacco products excise taxpayers were required to prepare and submit multiple copies of a tax return form as specified in the instructions on the tax return form. Taxpayers were also required (1) to file a copy of each tax return with the regional regulatory administrator at the same time the original was filed with IRS and (2) to retain on the premises a receipted copy from IRS of all tax returns.

Now only the original tax return form is to be submitted to IRS in accordance with the instructions on the tax return form. IRS is to forward to ATF the original tax return with full receipt data. A taxpayer, however, is required still to retain a true copy of the tax return filed with IRS (refer to 27 CFR 19.741(a)(4), 240.924, 245.232, 270.185, and 285.31). It is suggested that, since the procedure of receiving automatically a receipted copy of a tax return from IRS has been discontinued, the taxpayer should retain proof of taxpayment (e.g., canceled checks) and evidence that the tax return was filed on or before the due date. The taxpayer, however, can request from IRS a receipt for taxes paid (26 U.S.C. 6314).

Amendments to the Regulations

1. The amendment to 27 CFR Part 19 (Distilled Spirits Plants) is as follows: The provisions of § 19.524, relating to filing procedures of tax returns and to the mailing and delivering of tax returns, are being edited for better readability.

2. Amendments to 27 CFR Part 240 (Wine) are as follows: Paragraph (a) of § 240.594 is amended by changing the phrase "to the district director" to read "to the district director or the director of the service center in accordance with the instructions on the form." The wine proprietor in § 240.901 will

no longer be required to prepare multiple copies of Form 2050[1] and to forward a copy to the regional regulatory administrator at the same time he is required to file Form 2050 with the IRS. Moreover, the last sentence in this section is revised to read "As instructed on the form, Form 2050 shall be prepared and filed with the Internal Revenue Service as provided in § 240.591 or in § 240.591a." In paragraphs (a) and (b) of § 240.902, the wording, or facsimile thereof, "at the same time, a copy of Form 2052 shall be forwarded to the regional regulatory administrator" is removed. In paragraph (a) of § 240.902, the provision relating to the delivery or deposit in the U.S. mail of Form 2050 is being removed in favor of cross-referencing to § 240.594(a) where a similar provision already exists.

3. Amendments to 27 CFR Part 245 (Beer) are as follows: In paragraph (b)(2) of § 245.117d, the words "or forwarding a copy [of Form 2034 (5130.7)] to the regional regulatory administrator" are removed. Paragraph (b)(3) of this section is amended by changing the phrase "properly addressed to the district director, director of the service center, or the regional regulatory administrator, as the case may be" to read "properly addressed to the district director or the director of the service center in accordance with the instructions on the tax return". In § 245.227, the provision to file the tax return copy returned to the proprietor by the director of the service center or the district director as part of the proprietor's records at the brewery is removed.

4. Amendments to 27 CFR Part 270 (Manufacture of Cigars and Cigarettes) are as follows: In paragraph (a) of 27 CFR 270.162, the provisions are removed which require a manufacturer of tobacco products to send a copy of Form 3071 to the regional regulatory administrator and to retain the receipt copy of each tax returned transmitted to him by the district director or the director of the service center. The IRS no longer will transmit automatically to the taxpayer a receipted copy of Form 3071. Moreover, the second sentence in this paragraph is changed to read "The return shall be filed with the district director or the director of the service center in accordance with the instructions on the form"; in the fifth sentence, the requirement to submit in duplicate a letter to seek authorization not to file a tax return for which tax is not due or payable during a return period is reduced to one letter and no copy; and the fourth sentence is removed. Section 270.165(c) is amended by changing the clause "When the manufacturer sends the tax return by U.S. mail with remittance to the director or the district director or without remittance to the director of the service center," to read "When the manufacturer sends the tax return with or without remittance by U.S. mail to the district director or the director of the service center in accordance with the instructions on the form,". In paragraph (a) of § 270.167, the requirement to file Form 2617 in triplicate with the district director of the district in which the factory is located is modified to require that only an original Form 2617 is to be filed with the district director or the director of the service center in accordance with the instructions on the form. Furthermore, the requirement to retain the receipted copy of each prepayment return transmitted by the district director is removed. The third sentence of paragraph (a) of this same section is changed by requiring that the return be filed with the district director or the director of the service center in accordance with the instructions on the form.

5. The amendments to 27 CFR Part

---

[1] Reference in § 240.901 to Form 2052 was a clerical error; the correct form number 2050.

285 (Manufacture of Cigarette Papers and Tubes) are as follows: In § 285.25, a manufacturer of cigarette papers and tubes is no longer required to prepare a tax return on Form 2137 in triplicate and to expect a receipted copy from the district director because these provisions are removed. Also, instead of stating that the tax return shall be filed with the district director of the internal revenue district in which the factory is located, the first sentence is modified to state that the tax return shall be filed with the district director or the director of the service center in accordance with the instructions on the form.

Amendments to Other Regulatory Documents

Although not encompassed in the amendatory text of this final rule, all alcohol and tobacco products excise taxpayers are to disregard any instructions or items in regulatory documents, indicating substantially (1) that IRS will return one stamped (receipted) copy of the tax return to the taxpayer and (2) that copies in excess of an original tax return form shall be prepared and submitted to the district director, director of the service center, or a designated ATF officer, as the case may be. Toward this purpose, the following regulatory documents will be revised accordingly:

1. ATF F 5110.32, Prepayment Return – Distilled Spirits Tax.
2. ATF F 5110.35, Distilled Spirits Tax Return – Deferred Payment.
3. ATF F 2050 (5120.27), Wine Tax Return.
4. ATF F 2052, Prepayment Return – Wine Tax.
5. ATF F 2034 (5130.7), Beer Tax Return.
6. ATF F 3071 (5210.7), Tax Return – Manufacturer of Tobacco Products.
7. ATF F 2617 (5210.11), Prepayment Tax Return – Manufacturer of Tobacco Products.
8. ATF F 2137 (5230.1), Monthly Tax Return – Manufacturer of Cigarette Papers and Tubes.

Compliance with Executive Order 12291

This final rule is not classified as a "major rule" under the terms of Executive Order 12291, because this final rule will not result in an annual effect on the economy of 100 million dollars or more, will not result in a major increased cost to the public or private sector, and will not create a significant adverse effect on competition.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act (5 U.S.C. 603 and 604), relating to a regulatory flexibility analysis, are not applicable, because neither 5 U.S.C. 553 nor any other law requires the publication of a notice of proposed rulemaking for this final rule.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Custom duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting requirements, Research and security measures, Spices and flavorings, Surety bonds, Transportation, U.S. posessions, Warehouses, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 245

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting requirements, Research, Surety bonds, Transportation.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, U.S. possessions, Warehouses.

27 CFR Part 285

Administrative practice and procedures, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Packaging and containers, Penalties, Seizures and forfeitures, Surety bonds, Reporting requirements.

Drafting Information

The principal author of this final rule is Armida N. Stickney of the Research and Regulations Branch of ATF. Other personnel of ATF and of the Department of the Treasury participated in developing this final rule, both as to matters of substance and style.

Notice of Public Procedure

Because this amendment involves a matter of internal agency practice and procedure and merely simplifies agency procedure by discontinuing the requirement for copies of various forms no longer needed, it is unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b). Furthermore, since this paperwork burden on the regulated industry should be eliminated as soon as possible, the effective date limitation of 5 U.S.C. 553(d) is found to be unnecessary and contrary to the public interest.

Authority and Issuance

This Treasury decision is issued under the authority of 26 U.S.C. 705 (68A Stat. 917, as amended). Accordingly, 27 CFR Parts 19, 240, 245, 270, and 285 are amended as indicated below.

PART 19—DISTILLED SPIRITS PLANTS

1. Section 19.524 is revised to read as follows:

§ 19.524 Manner of filing returns.

(a) All returns on Form 5110.32 and Form 5110.35 will be filed with the district director, the director of the service center, or an ATF officer designated by the regional regulatory administrator in accordance with the instructions on the form. Where the remittance is in cash, the return and remittance shall be filed directly with the district director. Where the remittance is by check or money order, the remittance and tax return shall be filed with the district director or the director of the service center, as the case may be, in accordance with the instructions on the form. Where the remittance is to be effected by electronic fund transfer under § 19.523a, the return shall be filed with the director of the service center. Where the return and remittance are to be filed with a designated ATF officer, the proprietor shall file the return and remittance no later than 2 p.m. on the date the return is required to be filed.

(b) When the proprietor sends the return on Form 5110.32 or Form 5110.35 by U.S. mail, the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the proprietor. When the proprietor sends the return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the return and, if accompanied, of the remittance.

(Aug. 16, 1954, ch. 736, 68A Stat. 775 (26 U.S.C. 6301); June 29 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

PART 240—WINE

2. The last two sentences of paragraph (a) of § 240.594 are revised to read as follows:

§ 240.594 Prepayment of tax; general.

(a) *** The return, with remittance, shall be filed by forwarding or delivering it to the district director or the director of the service center in accordance with the instructions on the form. For the purpose of complying with this section, the term "forwarding" shall mean deposit in the U.S. mail, properly addressed to the Internal Revenue Service.

* * * * *

§ 240.901 [Amended]

3. Section 240.901 is amended by removing in the first sentence the phrase "in quadruplicate," and by amending the last sentence at the end to read as follows: "As instructed on the form, Form 2050 shall be prepared and filed with the Internal Revenue Service as provided in § 240.591 or in § 240.591a."

4. Section 240.902 is amended to read as follows:

§ 240.902 Form 2052.

(a) When a proprietor is required to prepay tax, as provided in §§ 240.594(a) and 240.595, the proprietor shall first prepare Form 2052, as instructed on the form, in an amount sufficient to cover the tax on the quantity of wine proposed to be moved that day. Prior to removal of the wine, the proprietor shall forward or deliver Form 2052 with remittance as provided in § 240.594(a).

(b) In the case of prepayment of tax by electronic fund transfer as provided in §§ 240.594(b) and 240.595, the proprietor shall (1) prepare Form 2052, and instructed on the form, in an amount sufficient to cover the tax on the quantity of wine proposed to be removed that day; (2) file Form 2052 with the director of the service center; and (3) direct his bank to effect an EFT.

PART 245—BEER

§ 245.117d [Amended]

5. Paragraph (b)(2) of § 245.117d is amended by removing the words, in the first sentence, which read "and by delivering or forwarding a copy to the regional regulatory administrator." Paragraph (b)(3) is also amended by changing the phrase "properly addressed to the district director, director of the service center, or, the regional regulatory administrator" to read "properly addressed to the district director or the director of the service center in accordance with the instructions on the form".

§ 245.227 [Amended]

6. Section 245.227 is amended by removing the last sentence in the section.

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

7. Section 270.162(a) is revised to read as follows:

§ 270.162 Semimonthly tax return.

(a) *Requirement for filing.* Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 3071 for each return period, including any period during which a manufacturer begins or discontinues business. The return shall be filed with the district director or the director of the service center in accordance with the instructions on the form. The manufacturer shall file the return at the time specified in § 270.165 regardless of whether cigars or cigarettes are removed or whether tax is due for that particular return period. However, when the manufacturer requests by letter and the regional regulatory administrator grants specific authorization, the manufacturer need not during the term of such authorization file a tax return or which tax is not due or payable.

* * * * *

§ 270.165 [Amended]

8. Paragraph (c) of § 270.165 is amended by changing the introductory clause of the first sentence "When the manufacturer sends the tax return by U.S. mail with remittance to the director or the district director or without remittance to the director of the service center," to read "When the manufacturer sends the tax return with or without remittance by U.S. mail to the district director or the director of the service center in accordance with the instructions on the form,".

9. Section 270.167(a) is revised to read as follows:

§ 270.167 Prepayment tax return.

(a) To prepay the tax on cigars and cigarettes, a manufacturer shall file a prepayment tax return on Form 2617, showing the tax to be paid on the cigars and cigarettes prior to removal. The manufacturer shall serially number each return on Form 2617, commencing with the number "1" on the first return filed in any calendar year, show therein his employer identification number as required by § 270.169 and shall verify by a written declaration that the return is made under penalties of perjury. The return shall be filed, prior to the removal of such products, with the district director or the director of the service center in accordance with the instructions on the form. A manufacturer prepaying the taxes on cigars and cigarettes under the provisions of this section shall continue to file semimonthly returns as required by § 270.162. Such semimonthly returns shall contain a statement, in Schedule B, that taxes have been prepaid by remittance with Form(s) 2617, and the statement shall indicate the serial number of Form(s) 2617 filed and the amount of taxes prepaid.

* * * * *

PART 285—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

§ 285.25 [Amended]

10. Section 285.25 is amended by changing in the first sentence the phrases, "in triplicate, with remittance, with the district director of the Internal Revenue district in which the factory is located" to read, "with the district director or the director of the service center in accordance with the instructions on the form" and by removing the last sentence in the section.

Signed: August 4, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: August 16, 1982.

J. M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on August 31, 1982; 8:45 am, and published in the Federal Register for September 1, 1982, 47 F.R. 38521)

Announcements

PART VI

Announcement 82–25

Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected as identified by the Administrator, Federal Emergency Management Agency (FEMA) are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

Date Disaster Areas Identified by FEMA	*Affected Areas*	*Type of Disaster*
June 28, 1982	KANSAS Washington township in Jackson County and Rossville township in Shawnee County	Severe storms and flooding beginning on or about June 8, 1982
July 7, 1982	FLORIDA Counties of: DeSoto and Hendry	Severe storms and flooding beginning on or about June 17, 1982
July 22, 1982	COLORADO County of: Larimer	Severe storms and flooding beginning on or about July 15, 1982
August 24, 1982	TENNESSEE Counties of: Marion Smith and Hamilton	Severe storms and flooding beginning on or about August 16, 1982
August 26, 1982	MISSOURI Counties of: Cass, Jackson and Clay	Severe storms and flooding beginning on or about August 12, 1982

Announcement 82–26

Statistical tabulation of firearms manufactured in the United States and firearms exported during the second quarter of Fiscal Year 1982

The following statistics represent the number of firearms manufactured in the United States during the Second Quarter (1 January through 31 March 1982) and the number of those firearms which were subsequently exported. The figures were compiled from Forms 4483-A submitted by federally licensed manufacturers of firearms.

The figures do not include firearms that were manufactured for use by the Armed Forces of the United States. Also, only those weapons that are "firearms" as that term is defined in Titles I and II of Public Law 90-618, the Gun Control Act of 1968, are included in the tabulation.

Type of Firearm Produced	*Total Production*
Pistols	223,944
Revolvers	486,122
Rifles	466,781
Shotguns and Comb. Guns	256,412
Machineguns	1,411
Any Other Weapon	0

Type of Firearm Exported	*Quantity*
Pistols	6,599
Revolvers	60,397
Rifles	24,438
Shotguns and Comb. Guns	17,824
Machineguns	144
Any Other Weapon	0

Announcement 82–27

Offer in Compromise (Firearms)

ATF accepted an offer in compromise of $100 from Michael Scott Martel, Huntington Beach, California, in compromise of tax assessed on transferring of firearms in violation of the National Firearms Act.

Announcement 82–28

Offers in Compromise

ATF has found a number of retail liquor dealer establishments in violation of 26 U.S.C. 5301(c). Each retailer had in its possession liquor bottles of which the contents has been altered and/or refilled. ATF accepted in compromise, $50 for each bottle found in the retailers' possessions. The establishments and offers in compromise accepted were:

Kathleen J. Litchfield dba Bridgeton Tavern Bridgeton, Missouri	$100
The Jam Lounge Bridgeton, Missouri	$350
Missouri Mining Co., A Drinking Establishment, Inc. Joplin, Missouri	$100
Lillian L. Sturgis dba Western Bar Joplin, Missouri	$100
Sheraton Inn Springfield, Missouri	$400
Carl E. Henderson and Ted Hough, dba Stepchild Lounge Springfield, Missouri	$ 50
Fred Cacioppo, dba King's Inn & Cocktail Lounge Kansas City, Missouri	$500
Downliner, Inc., dba Downliner Kansas City, Missouri	$200
Duke's Lounge, Inc. d/b/a Duke's Lounge Kansas City, Missouri	$300
Donnie's Blue Lounge Kansas City, Missouri	$ 50
McGuire Consulting Corporation Kimberling Inn Kimberling City, Missouri	$ 50
P. L. Agee, Inc., dba Lakeview Restaurant & Lounge Trenton, Missouri	$ 50
William Gary Meier dba Brass Pole St. Louis, Missouri	$250
Delilah M. Giles, dba Bamboo Lounge Waynesville, Missouri	$550
Kevin Kim, dba Fireside Inn St. Roberts, Missouri	$250
The Victorian Club, Inc. St. Louis, Missouri	$200
Gary's Lounge, Inc. dba Gary's Lounge Pine Lawn, Missouri	$ 50
James M. Thompson, dba Embers Lounge St. Robert, Missouri	$500
High Country Corp., dba Ramada Inn, St. Joseph St. Joseph, Missouri	$400
Jim & Joes Inc., dba Jim & joes St. Joseph, Missouri	$250

Johann Grefrath The Office Jefferson City, Missouri	$200

Announcement 82–29

Offer in Compromise

ATF has accepted an offer in compromise of $1,101.96 from Union Carbide Corporation, South Charleston, West Virginia, for violation of 26 U.S.C. 5061. The distilled spirits plant submitted the offer to compromise the penalties resulting from failure to timely file and timely pay taxes due for a 15-day tax period.

Announcement 82–30

Offer in Compromise

An offer in compromise of $175,000 was accepted by ATF from Suntory International Corporation, New York, New York. Suntory was found in violation of 26 U.S.C. 5001(a) by failing to pay the correct excise tax rate on imported sake to which distilled spirits had been added.

Announcement 82–31

Offer in Compromise

Dixie Brewing Company, Inc., New Orleans, Louisiana, has submitted an offer in compromise of $431 for penalties resulting from failure to timely file and pay its beer tax return.

Announcement 82–32

Offer in Compromise

Southern Wine & Spirits, Inc., Miami, Florida, was found by ATF in violation of 26 U.S.C. 5114(a), 27 U.S.C. 205(b)(3) and 205(d). The proponent gave free goods, money, and credit to retailers, thereby inducing such retailers to purchase its products to the exclusion of others, and failed to keep accurate records. In compromise of the civil and criminal liabilities incurred, ATF accepted an offer of $5,000.

Announcement 82–33

Offer in Compromise

An offer in compromise of $7,521.35 was accepted by ATF from Joseph E. Seagram & Sons, Inc., Louisville, Kentucky, for violation of 26 U.S.C. 5061. The distillery submitted the offer for penalties resulting from failure to timely file and timely pay taxes due for a 15-day tax period.

Announcement 82–34

Offer in Compromise

ATF has found Wine Imports of America, Ltd., Yonkers, New York, in violation of 26 U.S.C. 5114(a)(2), 26 U.S.C. 7207 and 27 U.S.C. 204(d) for preparing fraudulent and inaccurate records of receipt and fictitious retail invoices and credit memos. An offer of $20,000 was accepted in compromise of the civil and criminal liabilities incurred.

Announcement 82–35

Offer in Compromise

ATF has accepted an offer in compromise of $12,500 from the Pabst Brewing Company, Peoria Heights, Illinois, for violations of 26 U.S.C. 5054, 5061 and 5415. Pabst (1) failed to timely and properly pay tax on beer removed for consumption or sale, (2) failed to accurately maintain required records, and (3) failed to timely and accurately report information on ATF Forms 103 and 2034.

Announcement 82–36

Offer in Compromise

JFC International Inc., So. San Francisco, California, and The Cherry Company, Ltd., Honolulu, Hawaii, were found by ATF in violation of 26 U.S.C. 5001(a) for failing to pay the correct excise tax rate on imported alcoholic beverages (sake). ATF accepted an offer of $2,000 from JFC International Inc., and $4,000 from The Cherry Co., Ltd. in compromise of the liabilities incurred.

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ALCOHOL, TOBACCO AND FIREARMS

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quarterly bulletin

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

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Bureau of Alcohol, Tobacco and Firearms

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superseded by
Rev. Rul. 82-182

NOTICE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Trade and Consumer Affairs Division, Washington, D.C. 20226.

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INTRODUCTION

The Alcohol, Tobacco and Firearms Bulletin is the authoritative instrument of the Director, Bureau of Alcohol, Tobacco and Firearms, for announcing official rulings and procedures of the Bureau and for publishing Treasury Decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record.

It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). All rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, industry regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published.

Bureau Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

FOREWORD

The Alcohol, Tobacco and Firearms Bulletin is prepared in six parts as follows:

PART I—TREASURY DECISIONS
PART II—BUREAU RULINGS
PART III—BUREAU PROCEDURES

Respectively, these three parts contain regulations of the Department of the Treasury which relate to the laws administered by the Bureau of Alcohol, Tobacco and Firearms; rulings of the Bureau which interpret the requirements of such law and regulations; and procedures of the Bureau which establish methods for performing operations in compliance with the requirements of such law and regulations. Each of these parts is divided into four subparts covering matters relating to alcohol, tobacco, firearms and explosives.

PART IV—LEGISLATION. This part is divided into two subparts as follows: Subpart A, Currently Enacted Legislation and Subpart B, Committee Reports.

PART V—ADMINISTRATIVE MATTERS. This part is divided into three subparts as follows: Subpart A, Regulations pertaining to procedural and administrative practices of the Bureau; Subpart B, Statements of Organization and Function; Subpart C, Treasury Department Orders and Delegation Orders.

PART VI—ANNOUNCEMENTS. This part contains announcements of court decisions, notices of hearing and notices of proposed rulemaking published in the Federal Register, administrative actions taken by the Bureau, and items of general interest.

DEFINITIONS

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

DEFINITIONS

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code—26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code—27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS

The following abbreviations in current use and formerly used will appear in material published in the Bulletin:

A,B,C, etc.—The name of individuals
ATF—Bureau of Alcohol, Tobacco and Firearms
ATFB—Alcohol, Tobacco and Firearms Bulletin
ATF Proc.—ATF Procedure
ATF Rul.—ATF Ruling
C.B.—Cumulative Bulletin
Ct.D.—Court Decision
CFR—Code of Federal Regulations
D.O.—Delegation Order
E.O.—Executive Order
FAA Act—Federal Alcohol Administration Act
F.R.—Federal Register
M,N,X,Y,Z, etc.—The names of corporations, places and businesses, according to context
Pub. L.—Public Law
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling
Stat.—Statutes at Large
T.D.—Treasury Decision
T.D.O.—Treasury Department Order
U.S.C.—United States Code

x and y are used to represent certain numbers and when used with the word "dollars" represent sums of money.

Treasury Decisions PART I

Subpart A—ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

T.D. ATF-114

27 CFR Parts 5, 19, 170, 173, 194, 250 and 251

Deregulation of Liquor Bottle Manufacturers and Other Miscellaneous Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule by the Bureau of Alcohol, Tobacco and Firearms (ATF) eliminates 27 CFR Part 173, Returns of Substances, Articles, or Containers. All sections pertaining to liquor bottle manufacturers are removed. Liquor bottle indicia requirements are eliminated. A section has been added to 27 CFR Part 194 to allow individuals to collect used liquor bottles for the purpose of recycling or reclaiming the glass or other approved liquor bottle material. Also, the definition of liquor bottle has been changed to reflect ATF's reliance on the Food and Drug Administration to approve materials intended for use as liquor bottles. All sections of Part 173 which pertain to articles, substances, or containers are moved to 27 CFR Part 170. The liquor bottle manufacturing industry is being deregulated because registration and recordkeeping requirements have been determined to be of little benefit to ATF and an unnecessary burden on the affected industry. In addition to these changes, the Bureau is also simplifying the distinctive liquor bottle regulations to allow the bottler or importer to get distinctive liquor bottles approved without submission of sample bottles unless a sample bottle is specifically requested. Several miscellaneous, clarifying and editorial changes have also been made.

EFFECTIVE DATE: November 4, 1982.

FOR FURTHER INFORMATION CONTACT:
Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:
ATF published a notice of proposed rulemaking, Notice No. 382, in the **Federal Register** on September 2, 1981 (46 FR 44000), proposing the deregulation of liquor bottle manufacturers and other miscellaneous amendments. The 90-day comment period closed on December 1, 1981.

Comments

Seven comments were received during the comment period. Three of the commenters wanted ATF to eliminate all indicia requirements on liquor bottles including the words "Liquor Bottle." Four reasons were given for this request. In the first place, the three commenters stated that they saw very little, if any, useful purpose to be served by retaining the requirement that the words "Liquor Bottle" be permanently marked on liquor bottles. Secondly, the commenters questioned why liquor bottles should be treated differently from beer and wine bottles which are not required to bear similar information. Thirdly, one of the commenters felt that the requirement of the words "Liquor Bottle" on all liquor bottles worked a hardship on his industry since many brandy marketers use wine glass, usually champagne bottles, to package their brandy. The commenters also stated that ATF's indicia requirements increased the cost to manufacture liquor bottles and one of the commenters felt that the indicia requirements might be a non-tariff trade barrier to imports (especially for foreign suppliers of low volume items who presently may or may not be observing the requirement).

After careful consideration, ATF has decided that the benefits to be gained from eliminating all indicia requirements on liquor bottles outweigh the benefits of keeping a liquor bottle indicia requirement. Therefore, ATF has decided to adopt this comment and eliminate all liquor bottle indicia requirements.

Three commenters submitted comments dealing with the reuse or recycling of liquor bottles. One of these commenters wanted ATF to allow the reuse of liquor bottles only for completely standardized bottles of differing sizes which could be differentiated by bottler only through removable markers on labels. This commenter felt that such a policy would encourage the use of standardized bottles which would greatly increase the efficiency of bottle reuse. A second commenter stated that he supported the proposal to allow a proprietor to reuse liquor bottles only to the extent such containers never left a proprietor's premises. This commenter stated that any proposal to allow used bottles on a proprietor's premises once the bottles had left the premises would be too costly and inflationary and would create adverse effects on competition in comparison with foreign-based enterprises. The third commenter stated that he supported the proposed expansion of the authorized possession of used liquor bottles to include bottle collection for purposes of recycling but that he thought this provision should be modified further to provide for the authorized recycling of plastics resins in the event of approval of the use of plastic liquor bottles.

The change that ATF proposed in Notice No. 382 concerning recycling of liquor bottles was intended to add a subsection (c) to 27 CFR 194.263 which would allow any person to assemble used liquor bottles for the purpose of recycling the liquor bottle material, which currently is primarily glass. The word "recycle" was meant to convey the idea that the liquor bottle would be ground up and used to make new liquor bottles or containers.

No change was contemplated concerning the reuse of liquor bottles. Liquor bottles can continue to be reused by authorized persons in accordance with 27 CFR 194.263 and 27 CFR 19.635. However, under certain circumstances, persons reusing liquor bottles are required to keep records on the disposition of used liquor bottles in accordance with 27 CFR 170.25. This same requirement was previously stated in 27 CFR 173.11.

In this final rule, the word "reclaim" is used in subsection (c) to 27 CFR 194.263 in addition to the word "recycle." Reclaim is defined to mean that the bottle is to be ground up and used to make products other than liquor bottles or containers. In order to eliminate any possible confusion, subsection (c) of 27 CFR 194.263 has been changed to allow persons to collect used liquor bottles for the purpose of recycling or reclaiming the glass or other approved liquor bottle material. Also, the definitions of the words "recycle" and "reclaim" have been added to 27 CFR 194.11.

One of the commenters felt that there is no longer any need for specific requirements for distinctive liquor bottles. He stated that consumers should rely on the label for the correct contents of liquor bottles. This commenter stated that instead of specific distinctive liquor bottle regulations, ATF should just have general regulations which restrict any liquor bottle which is deceptive to the consumer or creates a misleading impression. After careful evaluation of this comment, ATF feels that specific distinctive liquor bottle regulations are still necessary to prevent consumers from being misled as to the contents of unusually designed liquor bottles. Consumers can be misled as to the contents of liquor bottles in two ways. Either the headspace can be too large or the bottle can be designed in such a way as to make it appear, upon visual examination, that the bottle holds substantially more than its actual capacity (irrespective of the correctness of the stated net contents). ATF believes that distilled spirits bottlers and importers should continue to be required to get ATF approval of liquor bottles of unusual design in order to ensure that consumers are not deceived as to the contents of the bottles. Therefore, this comment concerning the elimination of distinctive liquor bottle regulations is not adopted.

The seventh and final commenter stated that he supported ATF's proposal to deregulate the liquor bottle manufacturing industry and the simplified procedures governing approval of distinctive containers.

Liquor Bottle Manufacturers

Liquor bottle manufacturers have not been identified by the Bureau as a source of jeopardy to the Federal revenue nor is there any evidence that requiring them to register with ATF is a deterrent to illegal liquor operations. Therefore, ATF is deregulating the liquor bottle manufacturing industry. This final rule removes 27 CFR Part 173, Returns of Substances, Articles, or Containers, from Chapter I of the Code of Federal Regulations. All sections of Part 173 pertaining to liquor bottle manufacturers are eliminated. Liquor bottle manufacturers are no longer required to register with ATF, and ATF Form 4328, Notice of Intent to Manufacture Liquor Bottles and Assignment of Manufacturer's Number, is obsolete. Since ATF will no longer assign liquor bottles manufacturers' numbers, these numbers are no longer required on liquor bottles. However, liquor bottles bearing the obsolete manufacturer's number may continue to be used. In addition to the elimination of the manufacturer's number, all liquor bottle indicia requirements for both domestic and imported liquor bottles are eliminated. The deregulation of the liquor bottle manufacturing industry will result in manpower savings to the Government and will be more efficient for the industry. This deregulation will not result in increased cost to the industry.

Substances, Articles, or Containers

All sections of Part 173 which pertain to substances, articles, or containers are moved to 27 CFR Part 170 and added as Subpart B—Returns of Substances, Articles, or Containers. These sections of regulations are still required to ensure that ATF has the necessary tools to effectively combat illegal liquor operations. All mention of Form 169 or 169A will be changed to read Form 3330.3, Return of Articles, Containers or Substances.

Recycling or Reclaiming Liquor Bottle Material

The regulation in 27 CFR Part 194 governing possession of used liquor bottles is revised to allow any person to assemble used liquor bottles for the purpose of recycling or reclaiming the material from which the liquor bottles are made. However, regulations in Part 194 prohibiting reuse/refilling of liquor bottles by unauthorized persons remain in effect.

Elimination of References to Part 173

Due to the removal of Part 173, minor changes have been made to Parts 5, 19, 250 and 251 in order to eliminate references previously citing Part 173.

Distinctive Liquor Bottles

Regulations in 27 CFR Parts 19, 250 and 251 have been changed to simplify the procedures whereby distilled spirits proprietors, bottlers, or importers obtain approval to use distinctive liquor bottles. Proprietors, bottlers, and importers are no longer required to submit letter applications to get distinctive liquor bottles approved. Instead, the distilled spirits proprietor, bottler or importer will submit Form 1649/5100.31 to the Director for approval. The applicant will certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on Form 1649/5100.31 in lieu of submitting the actual bottle or model. In addition, the applicant will affix a readily legible photograph (both front and back of the bottle) to the front of each copy of Form 1649/5100.31, along with the label(s) to be used on the bottle. The applicant will not submit an actual bottle or an authentic model unless specifically requested to do so. Any applicant who wishes to use the same label on several different distinctive liquor bottles will be required to get each bottle approved on a separate Form 1649/5100.31. Also, any distilled spirits bottler who brings into the United States empty distinctive liquor bottles must get the Director's approval of such bottles on Form 1649/5100.31 prior to using the bottles.

This procedure for getting distinctive liquor bottles approved as part of the label approval process is currently in effect as an alternate procedure. (See ATF Ruling 80-4; ATF Quarterly Bulletin 1980-2.) This Form 1649/5100.31 procedure makes the prior method of obtaining approval for distinctive liquor bottles on letter applications obsolete.

Definition of Liquor Bottle

The previous definition of liquor bottle stated that it could be made of glass or earthenware, or of other suitable material approved by the Director. The new definition of liquor bottle states that it can be made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration. The new definition also states that the Director must determine that the bottle adequately protects the revenue. This change in the definition has become necessary because of advancing container technology which is providing new materials potentially adaptable for packaging distilled spirits. Pertinent issues involved in consideration of new or previously unapproved materials include the impact of those materials on—

(1) Revenues under the Internal Revenue Code (IRC);

(2) An orderly marketplace under the Federal Alcohol Administration Act (FAA); and

(3) Ingestion of materials by consumers under the Food, Drug and Cosmetic Act (FD&C).

ATF has established administrative procedures to continuously deal with issues related to the IRC and the FAA Act while the Food and Drug Administration has established administrative procedures to continuously deal with issues related to the FD&C Act. Consequently, the definition of liquor bottle has been changed to acknowledge the expertise of each agency. Regulations in 27 CFR Parts 19.11, 194.11, 250.11, and 251.11 have been changed accordingly.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

Copies of the comments received on the notice of proposed rulemaking, Notice No. 382, pertaining to this final rule are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau have participated in the preparation of this document, both in matters of substance and style.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Security measures, Spices and flavorings, Security bonds, Transportation, U.S. possessions, Warehouses, Wine.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Packaging and containers, Penalties, Reporting requirements, Surety bonds, Wine.

27 CFR Part 173

Alcohol and alcoholic beverages, Authority delegations, Customs duties and inspection, Excise taxes, Imports, Packaging and containers, Penalties, Reporting requirements.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting requirements, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic funds transfers, Excise taxes, Liquors, Packaging and containers, Reporting requirements, Surety bonds, Transportation, U.S. possessions, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting requirements, Transportation, Wine.

Authority and Issuance

Under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended), and in 27 U.S.C. 205 (49 Stat. 981, as amended), Title 27 of the Code of Federal Regulations is amended as follows:

CHAPTER I [AMENDED]

Paragraph 1. In 27 CFR Chapter I, Part 173 is removed from the table of contents.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

§ 5.2 [Amended]

Par. 2. Section 5.2 is amended by removing "27 CFR Part 173—Returns of Substances, Articles or Containers," as a related regulation.

PART 19—DISTILLED SPIRITS PLANTS

Par. 3. The table of contents of 27 CFR Part 19 is amended to remove § 19.633.

§ 19.3 [Amended]

Par. 4. Section 19.3 is amended by removing "27 CFR Part 173—Returns of Substances, Articles or Containers," as a related regulation.

Par. 5. Section 19.11 is amended to change the definition of liquor bottle. As revised, this paragraph reads as follows:

§ 19.11 Meaning of terms.

* * * * *

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

* * * * *

Par. 6. Section 19.632 is revised to eliminate the last sentence which refers to 27 CFR Part 173. As revised, this section reads as follows:

§ 19.632 Bottles authorized.

Liquor bottles shall conform to the applicable standards of fill provided in Subpart E of 27 CFR Part 5, including those for liquor bottles of less than 200 ml. capacity. The use of any bottle size other than as authorized in Subpart E of 27 CFR Part 5 is prohibited for the packaging of distilled spirits for domestic purposes, except that 100 ml. bottles may be used for packaging distilled spirits for sale in intrastate commerce only.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.633 [Removed]

Par. 7. Section 19.633 concerning indicia for bottles is removed. Indicia on liquor bottles is no longer required.

Par. 8. Section 19.634 is revised to simplify the procedure whereby a proprietor can obtain approval of liquor bottles of distinctive shape or design. The phrase "whether or not such bottles bear the indicia required under 27 CFR Part 173," which is located in the first paragraph, is eliminated. As revised, this section reads as follows:

§ 19.634 Distinctive liquor bottles.

(a) *Application*. A proprietor desiring approval of liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, or, to use such distinctive liquor bottles, shall submit Form 1649/5100.31 to the Director for approval. The applicant shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle) to the front of each copy of Form 1649/5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval*. Properly submitted Forms 1649/5100.31 for approval of distinctive liquor bottles shall be approved by the Director if the bottles are found to—

(1) Meet the requirements of 27 CFR Part 5;

(2) Be distinctive;

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

The applicant shall keep a copy of the approved Form 1649/5100.31, including an approved photograph (both front and back) of the distinctive liquor bottle, on file at his premises. If Form 1649/5100.31 is disapproved, the applicant shall be notified of the Director's decision and the reasons therefor.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Par. 9. Section 19.638 is revised to eliminate the phrase "whether or not it bears the indicia required under 27 CFR Part 173." As revised, this section reads as follows:

§ 19.638 Bottles not constituting approved containers.

The Director shall disapprove for use as a liquor bottle any bottle, including a bottle of less than 200 ml. capacity, which he determines to be deceptive. Any such bottle is not an approved container for the purposes of § 19.581 of this part, and shall not be used for packaging distilled spirits for domestic purposes.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Par. 10. The table of sections to 27 CFR Part 170 is amended to change the center heading "Subparts B-D—[Reserved]" and to reflect the addition of Subpart B—Returns of Substances, Articles, or Containers, immediately following Subpart A—Restamping Packages of Distilled Spirits. As revised, the table of sections for Subparts B-D reads as follows:

* * * * *

Subpart B—Returns of Substances, Articles, or Containers

Sec.
170.21 Scope of subpart.
170.22 Forms prescribed.
170.23 Meaning of terms.

170.24 Returns required; substances and articles.
170.25 Returns required; containers.
170.26 Rendition of returns.
170.27 Records required.
170.28 Tax.

Subparts C-D—[Reserved]

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805), unless otherwise noted.

Par. 11. The regulations in Part 173 are revised and redesignated as Part 170, Subpart B, consisting of §§ 170.21 through 170.28, and a Subparts C-D—[Reserved] center heading is added to Part 170. Subpart B center heading, §§ 170.21 through 170.28, and the Subparts C-D—[Reserved] center heading read as follows:

Subpart B—Returns of Substances, Articles, or Containers

§ 170.21 Scope of subpart.

The regulations in this subpart relate to the returns and records of the disposition of articles from which distilled spirits may be recovered, of the disposition of substances of the character used in the manufacture of distilled spirits, and of the disposition of containers of the character used for the packaging of distilled spirits.

§ 170.22 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this subpart, including bonds, applications, notices, reports, returns and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this subpart.

(b) ATF Publication 1322.1, Public Use Forms, is a numerical listing of forms issued by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 3800 Four Mile Run Drive, Arlington, Virginia 22206.

§ 170.23 Meaning of terms.

When used in this subpart and in forms prescribed under this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning as ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "include", "includes" and "including do not exclude things not enumerated which are in the same general class.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this subpart.

Articles. Denatured spirits or any product or preparation which contains more than 25% by volume of denatured spirits.

CFR. The Code of Federal Regulations.

Container. Any receptacle, vessel, barrel, cask, keg, bottle, jug, can, or jar of the character used for the packaging of distilled spirits.

Demand letter. The "demand letter" is the formal requirement of the special agent in charge that a person disposing of any article, container, or substance shall render a correct return.

Denatured spirits. Spirits to which denaturants have been added in pursuant to formulas prescribed in Part 212 of this chapter.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Dispose. "Dispose" and all forms of the word shall mean and include consign, sell, transfer, deliver, destroy, or lose, and all forms of those words.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but not denatured spirits unless specifically stated.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional regulatory administrator. The principal ATF regional official in charge of regulatory enforcement.

Render. To deliver the completed return to the office indicated in the demand letter, not later than the date required by the demand letter, or to mail such completed return, in an envelope properly addressed and stamped, in sufficient time for such envelope to be postmarked by the U.S. Postal Service not later than the date required by the demand letter. The time and date of the United States postmark shall constitute the time and date of delivery of the return to the designated office.

Special agent in charge. The principal official responsible for the ATF criminal enforcement program within an ATF district.

Substance. Includes any of the following: Any grade or type of sugar, syrup, or molasses derived from sugar cane, sugar beets, corn sorghum, or any other source; starch; potatoes; grain, or corn meal, corn chops, craked corn, rye chops, middlings, shorts, bran, or any other grain derivative; malt; malt sugar, or malt syrup; oak chips, charred or not charred; yeast; cider: honey; fruits; grapes; berries; fruit, grape, or berry juices or concentrates; wine; caramel; burnt sugar; gin flavor; Chinese bean cake or Chinese wine cake; urea; ammonium phosphate, ammonium carbonate, ammonium sulphate, or any other yeast food; ethyl acetate or any other ethyl ester; any other material of the character used in the manufacture of distilled spirits, or any chemical or other material suitable for promoting or accelerating fermentation; any chemical or material of the character used for the production of distilled spirits by chemical reaction; or any combination of any such materials or chemicals.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

United States. The several States and the District of Columbia.

U.S.C. The United States Code.

§ 170.24 Returns required; substances and articles.

Every person in the United States who disposes of any substance or article, as defined in § 170.23, shall, when required by a demand letter issued by the special agent in charge and until notified to the contrary in writing by such officer, render in writing a correct return on Form 3330.3, Returns of Articles, Containers or Substances, or on such other form authorized by the special agent in charge. The return shall enable the special agent in charge to make a determination in accordance with law as to whether all taxes due with respect to any distilled spirits produced or recovered from such substances or articles have been paid. The return shall be rendered for the periods specified in the demand letter and shall show—

(a) The date of each disposition of such substances or articles, and in such quantities, as shall be specified by the special agent in charge in the demand letter;

(b) The quantity and kind of each substance or article disposed of;

(c) The name and complete address of each purchaser, consignee, and other person actually receiving such substances or articles, and of any other person for, by, or through whom the substances or articles were ordered or disposed of;

(d) The date and method of shipment or delivery; and

(e) If delivered or shipped by truck or other conveyance, the State or city registration number of such truck or conveyance, and the name and complete address of the operator of such truck or conveyance as shown by his operator's license, giving the number of such operator's license and the State where issued. Where shipment is made by a common carrier, such as a railroad, trucking company, steamboat line, etc., the information required by paragraph (e) of this section need not be reported, but in lieu thereof there shall be furnished the complete routing of the shipment, full name and address of first carrier, and railroad car number or name of ship.

[Sec. 201, Pub. L. 85-859, 72 Stat. 1373, as amended (26 U.S.C. 5291))

§ 170.25 Returns required; containers.

Every person in the United States who disposes of any containers as defined in § 170.23 shall, when required by a demand letter issued by the special agent in charge, and until notified to the contrary in writing by such officer, for the purpose of protecting the revenue, render in writing a correct return on Form 3330.3 or on such other form authorized by the special agent in charge. The return shall be rendered for the periods specified in the demand letter and shall show—

(a) The date of each disposition of such containers, and in such quantities, as may be specified by the special agent in charge in the demand letter;

(b) The quantity and kind of containers disposed of;

(c) The name and address of each purchaser, consignee, and other person actually receiving such containers and of any other person for, by, or through whom the containers were ordered or disposed of;

(d) The date and method of shipment or delivery; and

(e) If delivered or shipped by truck or other conveyance, the State or city registration number of such truck or conveyance, and the name and complete address of the operator of such truck or conveyance as shown by his operator's license giving the number of such operator's license and the State where issued. Where shipment is made by a common carrier, such as a railroad, trucking company, steamboat line, etc., the information required by paragraph (e) of this section need not be reported, but in lieu thereof there shall be furnished the complete routing of the shipment, full name and address of first carrier, and railroad car number or name of ship.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 170.26 Rendition of returns.

(a) The return shall be rendered on Form 3330.3 to the officer or employee of the Bureau of Alcohol, Tobacco and Firearms designated in the demand letter. However, the special agent in charge may authorize the return to be rendered in another form requiring the same information in lieu of Form 3330.3 where it is shown that this is necessary in order to use tabulating equipment, or business machines, and will not (1) unduly hinder the effective administration of this part or (2) jeopardize the revenue. A person who proposed to use a form other than Form 3330.3 shall submit a letterhead application to do so to the special agent in charge. Such application shall describe the proposed form and set forth the need therefor. The special agent in charge shall determine whether there is a need for the substitute form and whether approval thereof would unduly hinder the effective administration of this part or result in jeopardy to the revenue. The special agent in charge shall inform the applicant of his decision and the reasons therefor. A substitute form shall not be employed until approval is received from the special agent in charge.

(b) The return shall be prepared and rendered in accordance with the instructions contained in the demand letter for the designated reporting period.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1373, as amended, 1374, as amended (26 U.S.C. 5291, 5301))

§ 170.27 Records required.

Every person who has been required to render a return shall maintain at his place of business such books, records, documents, papers, invoices, bills of lading, etc., relating to or connected with any such disposition, as will enable such person to make the required return. Such books, records, documents, papers, invoices, bills of lading, etc., shall be maintained for a period of three years and shall be kept readily available for, and open to, inspection by any officer of the Bureau of Alcohol, Tobacco and Firearms during the hours of business of such person.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1373, as amended, 1374, as amended (26 U.S.C. 5291, 5301))

§ 170.28 Tax.

Any person who produces, withdraws, sells, transports, or uses denatured distilled spirits, or articles, as defined in § 170.23, in violation of law or regulations shall be required to pay tax on such denatured distilled spirits or articles, as provided by 26 U.S.C. 5001(a)(6).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Subparts C–D—[Reserved]

PART 173—RETURNS OF SUBSTANCES, ARTICLES, OR CONTAINERS [REDESIGNATED AS SUBPART B OF PART 170 AND REVISED]

Par. 12. Part 173 is removed from Title 27 CFR.

All sections in part 173 which deal with articles, substances, or containers have been redesignated as Part 170, Subpart B and revised.

PART 194—LIQUOR DEALERS

Par. 13. Section 194.11 is amended to change the definition of liquor bottle and to add and define the words "reclaim" and "recycle." As revised, these paragraphs read as follows:

§ 194.11 Meaning of terms.

* * * * *

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

* * * * *

Reclaim. To grind up a liquor bottle or container and use the ground up material to make products other than liquor bottles or containers.

Recycle. To grind up a liquor bottle or container and use the ground up material to make new liquor bottles or containers.

* * * * *

Par. 14. Section 194.263 is amended by the addition of paragraph (c) authorizing possession of used liquor bottles for the purpose of recycling or reclaiming the liquor bottle material, and by making editorial changes. Section 194.263 is revised to read as follows:

§ 194.263 Possession of used liquor bottles.

The possession of used liquor bottles by any person other than the person who empties the contents thereof is prohibited except for the following:

(a) The owner or occupant of any premises on which such bottles have been lawfully emptied may assemble the same on such premises—

(1) For delivery to a bottler or importer on specific request of such bottler or importer;

(2) For destruction, either on the premises on which the bottles are emptied or elsewhere, including disposition for purposes which will result in the bottles being rendered unusable as bottles; or

(3) In the case of unusual or distinctive bottles, for disposition or sale as collectors' items or for other purposes not involving the packaging of any product for sale.

(b) Any person may possess, offer for sale, or sell unusual or distinctive bottles for purposes not involving the packaging of any product for sale.

(c) Any person may assemble used liquor bottles for the purpose of recycling or reclaiming the glass or other approved liquor bottle material.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

§ 250.313 [Removed]

Par. 15. The table of contents of 27 CFR Part 250 is amended to remove § 250.313.

Par. 16. Section 250.11 is amended to change the definition of liquor bottle. As revised, this paragraph reads as follows:

§ 250.11 Meaning of terms.

* * * * *

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

* * * * *

§ 250.313 [Removed]

Par. 17. Section 250.313 concerning indicia for bottles is removed. Indicia on liquor bottles is no longer required.

Par. 18. Section 250.314 is revised to simplify the procedure whereby an importer can obtain approval to bring distinctive liquor bottles (filled) into the United States from Puerto Rico or the Virgin Islands. This section is also revised to simplify the procedure whereby a bottler can obtain approval to use distinctive liquor bottles (empty) which have been brought into the United States from Puerto Rico or the Virgin Islands. The phrase "whether or not such bottles bear the indicia required under Part 173 of this chapter," which is located in the first paragraph of this section, is eliminated. As revised, § 250.314 reads as follows:

§ 250.314 Distinctive liquor bottles.

(a) *Application.* Liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, may be brought into the United States from Puerto Rico or the Virgin Islands by an importer (filled bottles) or a bottler (empty bottles). For filled bottles, the importer shall submit Form 1649/5100.31 to the Director for approval prior to bringing such bottles into the United States. For empty bottles, the bottler shall obtain approval from the Director on Form 1649/5100.31 prior to using the bottles. The importer or bottler, as applicable, shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle) to the front of each copy of Form 1649/5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval.* Properly submitted Forms 1649/5100.31 to bring distinctive liquor bottles (filled) into the United States from Puerto Rico or the Virgin Islands, or, properly submitted Forms 1649/5100.31 to use distinctive liquor bottles (empty) which have been brought into the United States from Puerto Rico or the Virgin Islands, shall be approved provided such bottles are found by the Director to—

(1) Meet the requirements of 27 CFR Part 5;

(2) Be distinctive;

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

The applicant shall keep a copy of the approved Form 1649/5100.31, including an approved photograph (both front and back) of the distinctive liquor bottle, on file at his premises. If Form 1649/5100.31 is disapproved, the applicant shall be notified of the Director's decision and the reasons therefor. The applicant importer is responsible for furnishing a copy of the approved Form 1649/5100.31, including a photograph of the distinctive liquor bottle, to Customs officials at each affected port of entry where the merchandise is examined.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Par. 19. Section 250.316 is revised to eliminate the phrase "whether or not it bears the indicia required under Part 173 of this chapter." As revised, this section reads as follows:

§ 250.316 Bottles not constituting approved containers.

The Director is authorzied to disapprove any bottle, including a bottle of less than 200 ml. capacity, for use as a liquor bottle which he determines to be deceptive. The Customs officer at the port of entry shall deny entry of any such bottle containing distilled spirits upon advice from the Director that such bottle is not an approved container for distilled spirits for consumption in the United States.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Par. 20. The table of contents of 27 CFR Part 251 is amended to remove § 251.203.

Par. 21. Section 251.11 is amended to change the definition of liquor bottle. As revised, this paragraph reads as follows:

§ 251.11 Meaning of terms.

* * * * *

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

* * * * *

§ 251.203 [Removed]

Par. 22. Section 251.203 concerning indicia for bottles is removed. Indicia on liquor bottles is no longer required.

Par. 23. Section 251.204 is revised to simplify the procedure whereby an importer can obtain approval to bring distinctive liquor bottles (filled) into the United States. This section is also revised to simplify the procedure whereby a bottler can obtain approval to use distinctive liquor bottles (empty) which have been imported into the United States. The phrase "whether or not such bottles bear the indicia required under Part 173 of this chapter," which is located in the first paragraph of this section, is removed. As revised, § 251.204 read as follows:

§ 251.204 Distinctive liquor bottles.

(a) *Application*. Liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, may be imported by an importer (filled bottles) or a bottler (empty bottles). For filled bottles, the importer shall submit Form 1649/5100.31 to the Director for approval prior to importation of such bottles into the United States. For empty bottles, the bottler shall obtain approval from the Director on Form 1649/5100.31 prior to using the bottles. The importer or bottler, as applicable, shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle to the front of each copy of Form 1649/5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval*. Properly submitted Forms 1649/5100.31 to import distinctive liquor bottles (filled), or, properly submitted Forms 1649/5100.31 to use distinctive liquor bottles (empty) which have been imported, shall be approved provided such bottles are found by the Director to—

(1) Meet the requirements of 27 CFR Part 5;

(2) Be distinctive;

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

The applicant shall keep a copy of the approved Form 1649/5100.31, including an approved photograph (both front and back) of the distinctive liquor bottle, on file at his premises. If Form 1649/5100.31 is disapproved, the applicant shall be notified of the Director's decision and the reasons therefor. The applicant importer is responsible for furnishing a copy of the approved Form 1649/5100.31, including a photograph of the distinctive liquor bottle, to Customs officials at each affected port of entry where the merchandise is examined.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Par. 24. Section 251.206 is revised to eliminate the phrase "whether or not it bears the indicia required under Part 173 of this chapter." As revised, this section reads as follows:

§ 251.206 Bottles not constituting approved containers.

The Director is authorized to disapprove any bottle, including a bottle of less than 200 ml. capacity, for use as a liquor bottle which he determines to be deceptive. The Customs Officer at the port of entry shall deny entry of any such bottle containing distilled spirits upon advice from the Director that such bottle is not an approved container for distilled spirits for consumption in the United States.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Signed: August 12, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: September 14, 1982.

J. M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on October 4, 1982; 8:45 a.m., and published in the Federal Register for October 5, 1982, 47 F.R. 43944)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-117

27 CFR Part 9

The Suisun Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Solano County, California, to be known as "Suisun Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Suisun Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT:

Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Mr. Ben A. Volkhardt, president of the West Solano County Grape Growers Association, petitioned ATF to establish a viticultural area in Solano County, California, to be know as "Suisun Valley." In response to this petition, ATF published a notice of proposed rulemaking, Notice 401, in the **Federal Register** on January 11, 1982 (47 FR 1153), proposing the establishment of the Suisun Valley viticultural area.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

Evidence of the Name

The name of the area, Suisun Valley, was well documented by the petitioner. After evaluating the petition, ATF believes that the Suisun Valley viticultural area has a unique historical identity and that the name "Suisun Valley" is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

The petition and attached documents show that Suisun Valley is located in the southwestern portion of Solano County adjacent to the Napa County line and east of Green Valley. Suisun Valley is approximately three miles wide and eight miles long and has about 800 acres of grapes within its boundaries. It lies within the southern end of two ranges of the Coast Range, the Vaca Mountains on the east and the Mount George Range on the west. The valley terminates in the south at the marshlands of Suisun Bay.

The Suisun Valley grape area lies within the Coastal area climate and is characterized by cool, moist winds blowing inland from the ocean and bay almost continuously from May through early Fall.

The climate in Suisun Valley is mid-region III as classified by the University of California at Davis system of heat summation by degree-days. Over a 14-year period, the University of California weather station in mid-Suisun Valley averaged an accumulation of 3,368 degree-days.

The season totals for degree-days above 50 degrees Fahrenheit for upper Suisun Valley were 3,768.4 in 1973 and 3,700.5 in 1974. In mid-Suisun Valley the season totals were 3,460.4 in 1973 and 3,256.3 in 1974. In comparison, the season totals for Green Valley, which lies directly west of Suisun Valley, were 3,683.9 in 1973 and 3,498.2 in 1974.

Fog hardly ever penetrates into the Suisun Valley due to its distance from the Pacific Ocean. In contrast, fog is very prevalent in Green Valley due to its proximity to the ocean.

The soils in Suisun Valley consist of Brentwood clay loam, Sycamore silty clay loam, San Ysidro sandy loam and Rincon clay loam. In contrast the soil in Green Valley consists of Conejo clay loam. The soil in the Vacaville-Dixon area consists of Yolo loam, Yolo silty clay loam, and Brentwood clay loam.

The watershed in Suisun Valley drains southward into the Suisun Bay. In the Vacaville-Dixon area, which lies to the east of Suisun Valley, the watershed drains eastward into the Sacramento River.

After evaluating the petition for the proposed Suisun Valley viticultural area, ATF has determined that due to the topographic and climatic features of Suisun Valley, it is distinguishable from the surrounding areas.

Boundaries

The boundaries proposed by the petitioner are adopted. ATF believes that these boundaries delineate an area with distinguishable physical and climatic features.

Miscellaneous

ATF does not wish to give the impression by approving the Suisun Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Suisun Valley wines.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Disclosure

A copy of the petition and appropriate maps with boundaries marked are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the prepparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9 45. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.45 Suisun Valley.

* * * * *

Par. 2. Subpart C is amended by adding § 9.45. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.45 Suisun Valley.

(a) *Name.* The name of the viticultural area described in this section is "Suisun Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Suisun Valley viticultural area are four U.S.G.S. maps. They are titled:

(1) "Mt. George Quadrangle, California", 7.5 minute series (1968);

(2) "Fairfield North Quadrangle, California", 7.5 minute series (1973);

(3) "Fairfield South Quadrangle, California", 7.5 minute series (1968); and

(4) "Cordelia Quadrangle, California", 7.5 minute series (1968).

(c) *Boundaries.* The Suisun Valley viticultural area is located in Solano County, California. The beginning point is the intersection of the Southern Pacific Railroad track with range line "R3W/R2W" in the town of Cordelia, located on U.S.G.S. map "Cordelia Quadrangle."

(1) From the beginning point, the boundary runs northeast in a straight line to the intersection of Ledgewood Creek with township line "T5N/T4N";

(2) Thence in a straight line in a northeast direction to Bench Mark (BM) 19 located in the town of Fairfield;

(3) Thence in a straight line due north to Soda Springs Creek;

(4) Thence in a straight line in a northwest direction to the extreme southeast corner of Napa County located just south of Section 34, Township 6 North, Range 2 West;

(5) Thence due west along the Napa/Solano County border to where it intersects with range line "R3W/R2W";

(6) Thence due south along range line "R3W/R2W" to the point of beginning.

Signed: October 14, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: November 10, 1982.

DAVID Q. BATES,
Deputy Assistant
Secretary (Operations).

(Filed by the Office of the Federal Register on November 23, 1982; 8:45 am, and published in the Federal Register for November 24, 1982, 47 F.R. 52996)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-118

27 CFR Part 9

Loramie Creek Viticultural Area

AGENCY: Bureau of Alcohol, T bacco and Firearms, Treasury.

ACTION: Final rule, Treasury cision.

SUMMARY: This final rule establishes a viticultural area in Shelby County, Ohio, to be known as "Loramie Creek." The Bureau of Alcohol, Tobacco and Firearms (ATF), believes the establishment of Loramie Creek as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT:
Lori D. Weins, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 [202-566-7626].

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR,

defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Mr. Homer K. Monroe, proprietor of the Vinterra Farm Winery and Vineyard in Houston, Ohio, petitioned ATF to establish a viticultural area in Shelby County, Ohio, to be known as "Loramie Creek." In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 422, in the **Federal Register** on September 1, 1982 (47 FR 38553), proposing the establishment of the Loramie Creek viticultural area.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

Evidence of the Name

The name of the area, Loramie Creek, was well documented by the petitioner. After evaluating the petition, ATF believes that the Loramie Creek viticultural area has a unique historical identity and that the area is known by the name "Loramie Creek." .

Geographical Evidence

The petition established the Loramie Creek viticultural area as a distinctive grape-growing region distinguished from the surrounding areas on the basis of soil.

The soil in the Loramie Creek viticultural area is the Glynwood-Blount Soil Association. This soil association is found on ridges and side slopes that parallel major streams and drainageways north and west of the Great Miami River. The landscape of the association is typified by mostly gently sloping to sloping topography of uplands. The major soils in this association formed in clay loam or silty clay loam glacial till. Glynwood soils are moderately well drained and mostly gently sloping to sloping. The Blount soils are somewhat poorly drained and occur on nearly level and gently sloping topography. Most areas of the association are used as cropland or pasture. The slope and a severe erosion hazard are the major limitations of the Glynwood soils for farming. Seasonal wetness and a moderate erosion hazard are the major limitations of the Blount soils for farming. Unless artificially drained, Blount soils are slow to dry out in spring.

The associations that surround the Loramie Creek viticultural area are the Blount-Pewamo Association and the Blount-Pewamo-Glynwood Association. The basic characteristics of the Blount-Pewamo Association are level to gently sloping, somewhat poorly drained and very poorly drained soils formed in glacial till on uplands. The Blount-Pewamo-Glynwood Association is typified by level to gently sloping, somewhat poorly drained, very poorly drained, and moderately well drained soils formed in loamy glacial till on uplands.

Boundaries

The boundaries proposed by the petitioner are adopted. Although ATF believes the Loramie Creek viticultural area could be expanded, to include some adjacent areas containing the Glynwood-Blount Soil Association, we are approving the boundaries as proposed because at the present time there is no viticulture in the adjacent areas. Specific boundaries are set out in the regulatory text to § 9.62.

Miscellaneous

ATF does not wish to give the impression by approving the Loramie Creek viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Loramie Creek wines.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Disclosure

A copy of the petition and appropriate maps with boundaries marked are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of the document is Lori D. Weins, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

List of subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.62. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.62 Loramie Creek.

* * * * *

Par. 2. Subpart C is amended by adding § 9.62 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ **9.62 Loramie Creek.**

(a) *Name*. The name of the viticultural area described in this section is "Loramie Creek."

(b) *Approved map*. The approved map for the Loramie Creek viticultural area is the U.S.G.S. map entitled "Fort Loramie Quadrangle, Ohio—Shelby Co.," 7.5 minute series (topographic), 1961 (photoinspected 1973).

(c) *Boundaries*. The Loramie Creek viticultural area is located entirely within Shelby County, Ohio. The boundaries are as follows:

(1) From the beginning point of the boundary at the intersection of State Route 47 and Wright-Puthoff Road, the boundary runs southward on Wright-Puthoff Road for a distance of 1⅛ miles to the intersection of the Wright-Puthoff Road with Consolidated Railroad Corporation (indicated on the U.S.G.S. map as New York Central Railroad);

(2) Then along the Consolidated Railroad Corporation right-of-way in a southwesterly direction for a distance of 2⅛ miles to the intersection of the Consolidated Railroad Corporation right-of-way with Loramie Creek;

(3) Then upstream along Loramie Creek in a northwesterly direction for a distance of approximately 3½ miles to the intersection of Loramie Creek and State Route 47;

(4) Then eastward on State Route 47 for a distance of approximately 4⅛ miles to the beginning point of State Route 47 and Wright-Puthoff Road.

Signed: November 10, 1982

STEPHEN E. HIGGINS,
Acting Director.

Approved: November 16, 1982.

DAVID Q. BATES,
Deputy Assistant
Secretary (Operations).

(Filed by the Office of the Federal Register on November 24, 1982; 8:45 am, and published in the Federal Register for November 26, 1982, 47 F.R. 53355)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

T.D. ATF-116

27 CFR Parts 194, 250, and 251

Elimination of Certain Public Use Forms and Adjusted Interest Rates Applicable to Special Tax

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends the regulations pertaining to retailers, wholesalers, and importers of alcoholic beverages. The Bureau of Alcohol, Tobacco and Firearms (ATF) is eliminating certain required Government forms, records, and reports in favor of utilizing the dealer's and importer's accounting and recordkeeping systems to the extent that these systems accurately account for all receipts and dispositions of distilled spirits. ATF will place strong emphasis on the integrity and utilization of the dealer's commercial records and supporting summary records in lieu of the previously required Government records and reports.

EFFECTIVE DATE: December 16, 1982.

FOR FURTHER INFORMATION CONTACT:
Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:
The specific changes will: (1) Eliminate two public use forms and the

daily recapitulation record prepared by wholesale liquor dealers, (2) provide for a new monthly summary report of receipts and disposition to be prepared by wholesale liquor dealers only when required, in writing, by the regional regulatory administrator, (3) eliminate the requirement for a consignee wholesale liquor dealer to serially number records of receipt, (4) eliminate the requirement for wholesale liquor dealers to mark records of receipt and disposition "Government File Copy", and (5) provide a means for all retail dealers to make application for permission to maintain required records of receipt off-premises. In addition, this final rule provides for annual adjustments to interest rates and announces the new adjusted interest rate of 20 percent which the Internal Revenue Service charges on tax underpayments and pays on tax overpayments. The new adjusted interest rate effective February 1, 1982, was caused by a change to section 6621(b) of the Internal Revenue Code of 1954 by Public Law 97-34 (Economic Recovery Tax Act of 1981). In particular, the change in interest rates from 12 to 20 percent applies to retailers, wholesalers, importers and certain other individuals dealing in or using alcoholic beverages, who are required to pay special (occupational) tax. After 1982 all adjustments to interest rates will be effective on January first of each year.

SUPPLEMENTARY INFORMATION:

Background

A. Relating to Forms, Records and Reports

On September 18, 1981, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a notice of proposed rulemaking, No. 383, in the **Federal Register** (46 FR 46347), which proposed to amend Parts 194, 250 and 251 of 27 CFR. The comment period for this notice closed on December 17, 1981. This notice proposed: (1) To eliminate two public use forms required to be prepared and submitted by wholesale dealers and importers of distilled spirits (ATF Form 52A and 52B (5170.9), Wholesale Liquor Dealer's Report of Receipts—Wholesale Liquor Dealer's Report of Disposals and ATF Form 338 (5110.48), Wholesale Liquor Dealer's Semiannual Report), (2) to eliminate the requirement for wholesale liquor dealers to maintain the daily recapitulation record on all receipts and dispositions of distilled spirits, (3) to require a new monthly summary report of receipts and dispositions of distilled spirits only when required, in writing, by the regional regulatory administrator, and (4) to eliminate the requirement for a consignee wholesale liquor dealer to enter a separate serial number on each receiving invoice.

Since the information which was contained on the two public use forms and the recapitulation record is available to ATF in the dealer's accounting and recordkeeping systems, ATF decided to eliminate the required records and instead, rely on the dealer's commercial records which are a part of the recordkeeping and accounting systems. It was concluded that the revenue would not be jeopardized by the elimination of these records.

B. Relating to Adjusted Interest Rates, as Prescribed in Section 6621(b) of 26 U.S.C.

Under the provisions of section 6621(b) of 26 U.S.C., as amended by section 711, Pub. L. 97-34 (Economic Recovery Tax Act of 1981), the Commissioner of Internal Revenue published Revenue Ruling 81-260 in Internal Revenue Bulletin No. 1981-44, on November 2, 1981, which adjusted the interest rate from 12 to 20 percent charged on certain tax underpayments and paid on overpayments. The adjusted interest rate is effective

February 1, 1982, and applies to amounts outstanding on that date or arising thereafter.

Previously, section 6621(b) of 26 U.S.C. only provided for adjusting interest rates every two years. The Economic Recovery Tax Act of 1981 (Pub. L. 97-34) amended section 6621(b) of 26 U.S.C. and now provides for an annual adjustment of the interest rate, to be effective 1 January of each year after 1982. This new law provides that the interest rate shall be set by October 15 and is based on 100 percent of the average prime rate for the preceding September.

Comments

In response to Notice No. 383, ATF received three comments. These comments were received from: (1) United Vintners, Inc., (2) Somerset Importers, Ltd., and (3) Wine and Spirits Wholesalers of America, Inc. (WSWA). All of the comments fully supported the proposal to eliminate the two public use forms. Two of the comments specifically supported the proposals to eliminate the daily recapitulation record and create a new monthly summary report.

The WSWA comment also recommended additional amendments to Part 194 as follows: (1) Amend § 194.235 (previously § 194.240) to eliminate the requirement for wholesale liquor dealers to stamp records of receipt and disposition "Government File Copy", and (2) eliminate the requirement for wholesale liquor dealers to maintain separate Government files for records of receipt and disposition.

Based on the comments and recommendations received in response to Notice No. 383 the following actions are incorporated into this final rule:

(1) Elimination of the Daily Wholesale Liquor Dealer's Report of Receipts—Wholesale Liquor Dealer's Report of Disposals, ATF Form 52A and 52B (5170.9).

(2) Elimination of the Wholesale Liquor Dealer's Semi-annual Report, ATF Form 338 (5110.48).

(3) Elimination of the requirement for wholesale liquor dealers to enter a separate serial number on records of receipt.

(4) Elimination of the requirements for wholesale liquor dealers to maintain a daily recapitulation record of receipts and dispositions.

(5) Elimination of the requirement for wholesale liquor dealers to prepare and file ATF Form 338 (5110.48) and, in lieu of this form and the daily recapitulation record, provide for a new monthly summary report which would only be prepared when specifically required by the regional regulatory administrator. When required by the regional regulatory administrator, the monthly summary report would show the daily receipts and disposition, however, a wholesaler may file an application to post this report on less frequent intervals than daily.

(6) Elimination of the requirements, as recommended by the WSWA, for wholesale dealers and importers of distilled spirits to mark records of receipt and disposition "Government File Copy", and to maintain separate Government files for these records.

(7) Under the Department of the Treasury's Regulatory Improvement Implementation Program, ATF received an employee suggestion to amend 27 CFR 194.234 (previously § 194.239) by liberalizing the records maintenance requirements for retail liquor dealers. Currently, a retail dealer who exclusively retails wine and/or beer for off-premises consumption may file an application for permission to maintain records of receipt at another premises under its control. This option was provided to accommodate multilocation retail stores which often have a centralized recordkeeping location. It was suggested that § 194.234 be liberalized to provide retail dealers in distilled spirits the same

option of maintaining records of receipt at another location. It was further suggested that this section be amended to apply to both the sale of alcoholic beverages for on-premises or off-premises consumption. The option to maintain records of receipt at another location would be limited to the jurisdiction of a regional regulatory administrator. ATF is accepting and incorporating this suggestion into the final regulations.

Other

Because of the enactment of Public Law 97-34 (Economic Recovery Tax Act of 1981, August 13, 1981) which amended section 6621(b) of the Internal Revenue Code of 1954, ATF is revising § 194.110 of 27 CFR.

Due to the proliferation of interest rates which vary from year to year, it is determined to be no longer feasible to publish the complete list of applicable interest rates and effective dates in § 194.110. Continued publication of this complete list would require § 194.110 to be amended annually because of the new requirements contained in 26 U.S.C. 6621(b).

As revised, § 194.110 will no longer list the applicable interest rates, but will merely describe the method by which interest rates are adjusted and the source from which specific information on applicable rates can be obtained.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it will not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 604) for a final regulatory flexibility analysis shall not apply to this final rule.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting requirements, Wine.

27 CFR Part 250

Administrative practice and procedures, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic funds transfer, Liquors, Packaging and containers, Reporting requirements, Surety bonds, Transportation, U.S. possessions, Wine.

27 CFR Part 251

Administrative practice and procedures, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting requirements, Transportation, Wine.

Drafting Information

The principal author of these regulations is Norman Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau and from the Treasury Department participated in developing this document, both in matters of substance and style.

Authority

Accordingly, under the authority contained in 26 U.S.C. 7805 (68 Stat. 917), 27 CFR Parts 194, 250 and 251 are amended as follows:

PART 194—LIQUOR DEALERS

Paragraph 1. The table of sections in 27 CFR Part 194, Subpart O is amended by changing the title of § 194.230 from "Recapitulation Records" to "Monthly Summary Report"; removing §§ 194.231, 194.234 through 194.237 and 194.244; and redesignating §§ 194.232 as 194.231, 194.233 as 194.232, 194.238 and 194.239 as 194.233 and 194.234, respectively, 194.240 as 194.235 and changing the title of the section from "Time and Manner of filing records of receipt and disposition" to "Filing", and redesignating §§ 194.241 through 194.243 as 194.236 through 194.238, respectively, and §§ 194.245 through 194.247 as 194.239 through 194.241, respectively. As amended, the table of sections for 27 CFR Part 194, Subpart O reads as follows:

Subpart O—Prescribed Records and Reports, and Posting of Signs

Wholesale Dealers' Records and Reports

Sec.

* * * * *

194.230 Monthly summary report.
194.231 Conversion between metric and U.S. units.
194.232 Discontinuance of business.
194.233 Requirements when wholesale dealer in liquors maintains a retail department.

Retail Dealer's Records

194.234 Requirements for retail dealers.

Files of Records and Reports

194.235 Filing.
194.236 Place of filing.

Period of Retention

194.237 Retention of records and files.
194.238 Photographic copies of records.

Posting of Signs

194.239 Sign of wholesale dealer in liquors.
194.240 Display of false sign.
194.241 Other dealers; no sign required.

* * * * *

Par. 2. Section 194.110 is revised to replace references to specific interest rates with a reference to the method by which adjusted interest rates are determined by law. As revised, § 194.110 reads as follows:

§ 194.110 Interest on unpaid tax.

(a) *General.* Interest is due on unpaid special tax from the date the tax was required to be paid to the date paid. Interest shall be charged for each day at the rate prescribed by law in effect on that day.

(b) *Adjusted interest rates.* Adjusted interest rates are announced by the Commissioner of Internal Revenue not later than October 15 of any year, in accordance with variations in the prime interest rate during September of that year, as prescribed by 26 U.S.C. 6621(b). The regional regulatory administrator will provide information, when requested, regarding interest rates applicable to specific time periods.

(Sec. 7, Pub. L. 96-625, 88 Stat. 2114 as amended (26 U.S.C. 6621); 68A Stat. 817 (26 U.S.C. 6601))

§ 194.193 [Amended]

Par. 3. Section 194.193 is amended by changing the section reference in the last sentence from "§ 194.239" to "§ 194.234."

Par. 4. Section 194.221 is revised by including the requirements for wholesale dealers to prepare and file, when required by the regional regulatory administrator, a monthly summary report in lieu of a daily recapitulation record; other minor editorial changes are included. As revised, § 194.221 reads as follows:

§ 194.221 General requirements as to distilled spirits.

Except as provided in §§ 194.223 and 194.224, every wholesale dealer in liquors shall keep daily records of the physical receipt and disposition of distilled spirits, as prescribed in §§ 194.225 and 194.226. When required in writing by the regional regulatory administrator, dealers shall also prepare and file a monthly summary report totaling the daily receipts and disposition of distilled spirits as prescribed in § 194.230.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

§ 194.222 [Amended]

Par. 5. Section 194.222 is amended by changing the section reference in the second sentence from "§ 194.242" to "§ 194.237."

Par. 6. Section 194.225 is amended by revising paragraphs (a)(2) and (b) and the authority citation to read as follows:

§ 194.225 Records of receipt.

(a) ***

(2) Date of receipt (to include date of inventory for recorded gains),

* * * * *

(b) *Form of record.* The record prescribed by paragraph (a) of this section will be a part of the accounting system and shall consist of consignor's invoices (or, where such invoices are not available on the day the shipment is received, memorandum receiving records prepared on the day of receipt of distilled spirits, to include records of inventory for recorded gains), and credit memorandums covering distilled spirits returned to the dealer, which contain all required information.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

Par. 7. Section 194.226 is amended by revising paragraphs (a)(2) and (b) and the authority citation to read as follows:

§ 194.226 Records of disposition.

(a) ***

(2) Date of disposition (to include date of discovery in the case of casualty, theft or recorded inventory losses),

* * * * *

(b) *Form of record.* The record prescribed by paragraph (a) of this section will be part of the accounting system and shall consist of wholesale dealer's invoices (or, where such invoices are not available at the time the spirits are removed, memorandum shipping records prepared at the time of removal of the distilled spirits, to include date of discovery in the case of casualty, theft or recorded inventory losses) which contain all required information.***

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

Par. 8. Section 194.227 is amended by revising the third and fourth sentences and the authority citation to read as follows:

§ 194.227 Cancelled or corrected records.

***If a wholesale dealer in liquors voids an invoice for any reason, the file copy prescribed in § 194.235 will be marked "Cancelled" and be filed as provided in that section; any remaining copy of the voided invoice will be destroyed or similarly cancelled and filed. If a new invoice is prepared, its serial number will be cross referenced on any retained copies of the cancelled invoice.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended (26 U.S.C. 5114))

Par. 9. Section 194.230 is revised to read as follows:

§ 194.230 Monthly summary report.

(a) *Requirement.* Every wholesale dealer in liquors shall, when required, submit to the regional regulatory administrator, a monthly summary report of the total quantities of all distilled spirits received and disposed of daily during the month (including the date of discovery for theft, casualty and inventory losses and inventory gains). This report will be posted by the wholesaler on a daily basis. If there were no receipts or disposals of distilled spirits during the month, the report will be marked "No Transactions During Month." This report will be filed not later than the 15th day of the month following the report period, and a copy retained by the dealer. Upon receipt of an application the regional regulatory administrator may authorize a dealer to post the report less frequently until otherwise notified. The regional regulatory administrator's authorization will specify the intervals at which the posting will be accomplished, but not less frequently than monthly.

(b) *Form of report.* When required, the monthly summary report may be prepared in a format which most conveniently adapts itself to the dealer's accounting and recordkeeping systems. In addition to any other information shown therein, the report will include the daily totals of all distilled spirits received and disposed of, including dispositions caused by inventory, casualty or theft losses and receipts caused by recorded gains in inventory; and

(1) Daily totals of all bottled spirits received and disposed of, recorded separately by wine gallons, or liters,

(2) Daily totals of all bulk spirits in packages received and disposed of, recorded separately by proof gallons.

(c) *Declaration.* When required to be filed, the monthly summary report will bear the following declaration signed by the dealer or an authorized agent:

I declare under the penalties of perjury that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete, and is supported by true, correct, and complete records which are available for inspection.

(d) When the monthly summary report is not required by the regional regulatory administrator to be filed, every wholesale dealer in distilled spirits is still required to maintain and make available for review by ATF officers:

(1) Records of receipt, required by § 194.225;

(2) Records of disposition, required by § 194.226; and

(3) Any other supporting information or documents regarding the receipt and disposition of distilled spirits which have a direct bearing in determining the completeness and accuracy of the accounting and recordkeeping systems.

(Act of August 16, 1954, 68A Stat. 749 (26 U.S.C. 6065); Section 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1348, as amended, 1395, as amended (26 U.S.C. 5114, 5146, 5555))

§ 194.231 [Removed.]

§ 194.232 [Redesignated as § 194.231]

Par. 10. Section 194.231 is removed and § 194.232 is redesignated as § 194.231.

Par. 11. Section 194.233 is redesignated as § 194.232 and revised to read as follows:

§ 194.232 Discontinuance of business.

When a wholesale dealer in liquors, who is required under § 194.230 to file a monthly summary report, discontinues business, a monthly summary report marked "Final" shall be filed covering transactions through the date of discontinuance.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

§§ 194.234, 194.235, 194.236, and 194.237 [Removed.]

Par. 12. Sections 194.234, 194.235, 194.236 and 194.237 are removed.

Par. 13. Section 194.238 is redesignated as § 194.233 and revised to read as follows:

§ 194.233 Requirements when a wholesale dealer in liquors maintains a retail department.

(a) When a wholesale dealer in liquors maintains a separate department on the premises for the retailing of distilled spirits, and the retail sales of distilled spirits normally represent 90 percent or more of the volume of distilled spirits sold, the dealer may "constructively" receive all distilled spirits in the retail department. Sales involving a wholesale transaction may be "constructively" sold through the wholesale department.

(1) *Receipts.* In lieu of maintaining and preparing the records required by §§ 194.225 and 194.226, a wholesale dealer may constructively receive *all* distilled spirits in its retail department. In this case, the receiving document will serve as a receipt for (through) the wholesale department and a disposition (transfer) to the retail department. The receiving document will be maintained by the retail department, as required by § 194.234.

(2) *Dispositions.* In lieu of the records required by § 194.226, a wholesale dealer may constructively sell distilled spirits from its retail department to other dealers. The sales invoice or bill will be filed in the wholesaler's disposition records and will serve as a record of receipt from the retail department and a record of disposition to another dealer.

(b) Except as provided in paragraph (a) of this section, a wholesale dealer shall prepare and maintain the required records of receipt and disposition as prescribed in §§ 194.225 and 194.226. Transfers between the wholesale and retail departments will be treated in the same manner as any other transaction involving the wholesale department.

(c) When required by § 194.230, a wholesale dealer shall prepare and file the monthly summary report of actual or constructive receipts and dispositions of all distilled spirits.

(d) Wholesale and retail departments need not be physically separated.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1345, as amended, 1395, as amended (26 U.S.C. 5114, 5124, 5555))

Par. 14. Section 194.239 is redesignated as § 194.234. Paragraph (a) of § 194.234 is amended by revising and dividing the first sentence into two sentences to read as follows:

§ 194.234 Requirements for retail dealers.

(a) *Records of receipt.* All retail dealers shall keep at their place of business complete records of all distilled spirits, wines, or beer received showing (1) The quantities thereof, (2) from whom received, and (3) the receiving dates. The regional regulatory administrator may, pursuant to an application authorize the records to be maintained at another business premises under the control of the same dealer when it is determined that such maintenance will not cause undue inconvenience to ATF officers desiring to examine such records.***

* * * * *

Par. 15. Section 194.240 is redesignated as § 194.235 and revised by eliminating the requirements to mark one copy of each record of receipt and disposition "Governmental file copy" and to maintain a separate Government file for these records. As revised § 194.235 reads as follows:

§ 194.235 Filing.

The required records of receipt and disposition of all distilled spirits, as prescribed in §§ 194.225 and 194.226, may be filed in accordance with the wholesaler's regular accounting and recordkeeping systems. The required records shall consist of the dealer's own file copies of the receiving or shipping invoices.

(a) Dealers may file records of receipt and disposition in accordance with their own filing system as long as the filing system systematically and accurately accounts for all receipts and dispositions of distilled spirits.

(b) The required records of receipt and disposition will be filed not later than one business day following the date the transaction occurred.

(c) Supporting documents for receipts and dispositions, such as delivery receipts and bills of lading, may be filed in accordance with the wholesaler's regular accounting and record-keeping practices.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

Par. 16. Section 194.241 is redesignated as § 194.236 and revised to read as follows:

§ 194.236 Place of filing.

Prescribed records of receipt and disposition and monthly summary reports required by § 194.230 will be maintained by transaction or reporting date, at the dealer's place of business. The regional regulatory administrator may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the dealer, if the alternative location does not cause undue inconvenience to ATF officers desiring to examine the files.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended (26 U.S.C. 5114))

§ 194.242 [Redesignation as § 194.237]

Par. 17. Section 194.242 is redesignated as § 194.237.

Par. 18. Section 194.243 is redesignated as 194.238 and revised to read as follows:

§ 194.238 Photographic copies of records.

(a) *General.* Dealers may record, copy, or reproduce records required by this part. Dealers may use any process which accurately reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the produced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original record are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the dealer, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

§ 194.244 [Removed]

Par. 19. Section 194.244 and the undesignated center headnote preceding this section is removed.

§§ 194.245–194.247 [Redesignated as §§ 194.239–194.241]

Par. 20. Sections 194.245 through 194.247 are redesignated as §§ 194.239 through 194.241, respectively.

§ 194.271 [Amended]

Par. 21. Section 194.271, paragraph (c), is amended by changing the section references in the last sentence from "§§ 194.241 and 194.242" to "§§ 194.236 and 194.237."

PART 250—[AMENDED]

Par. 22. The table of sections in 27 CFR Part 250, Subparts H and N is amended by removing §§ 250.165 and 250.274, respectively. The undesignated center headnote, "Procurement of Forms", preceding these sections is also removed.

§§ 250.165 and 250.274 [Removed]

Par. 23. Sections 250.165 and 250.274 are removed along with the undesignated center headnote preceding these sections.

Par. 24. Section 250.275 is revised by eliminating the requirements to mark one copy of each record of receipt and disposition "Government file copy" and to maintain a separate Government file for these records in a specified manner. As revised § 250.275 reads as follows:

§ 250.275 Filing.

(a) All records and reports required by this part will be maintained separately, by transaction or reporting date, at the importer's place of business. The regional regulatory administrator may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to ATF or Customs officers desiring to examine the files or delay in the timely submission of documents.

(b) If an importer conducts wholesale operations, one legible copy of each required record of receipt and disposition shall be filed not later than one business day following the date of transaction.

(c) If an importer conducts only retail operations, either loose-leaf or book records may be maintained for the daily receipt of liquors which contain all the required information.

(d) Supporting documents, such as consignors' invoices, delivery receipts, bills of lading, etc., or exact copies of the same, may be filed in accordance with the importer's regular accounting and recordkeeping practices.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

PART 251—[AMENDED]

Par. 25. The table of sections in 27 CFR Part 251, Subpart I is amended by removing § 251.135.

§ 251.135 [Removed]

Par. 26. Section 251.135 is removed.

Par. 27. Section 251.136 is revised by eliminating the requirements to mark one copy of each record of receipt and disposition "Government file copy" and to maintain a separate Government file for these records in a specified manner. As revised § 251.136 reads as follows:

§ 251.136 Filing.

(a) All records and reports required by this part will be maintained separately, by transaction or reporting date, at the importer's place of business. The regional regulatory administrator may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to ATF or Customs officers desiring to examine the files or delay in the timely submission of documents.

(b) If an importer conducts wholesale operations, one legible copy of each required record of receipt and disposition shall be filed not later than one business day following the date of transaction.

(c) If an importer conducts only retail operations, they may maintain either loose-leaf or book records of the daily receipt of liquors which contain all the required information.

(d) Supporting documents, such as consignors' invoices, delivery receipts, bills of lading, etc., or exact copies of the same, may be filed in accordance with the importer's regular accounting and recordkeeping practices.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

Signed: August 31, 1982.

W. T. DRAKE,
Acting Director.

Approved: September 21, 1982.

J. M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register for November 15, 1982: 8:45 a.m., and published in the Federal Register for November 16, 1982, 47 F.R. 51569)

Subpart B—TOBACCO

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-115

27 CFR Parts 270, 275 and 296

Cigarettes: Increase in Rate of Tax, and Floor Stocks Tax

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This document implements section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 by (1) Amending ATF tobacco regulations to conform to the increase in cigarette tax rates, and (2) adding new regulations for the collection of floor stocks tax on certain cigarettes which, on January 1, 1983, are held for sale.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Norman P. Blake, Coordinator, or Steven C. Simon, Specialist, (202) 566-7626. Mailing address: Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

SUPPLEMENTARY INFORMATION:

Public Law 97-248, entitled "Tax Equity and Fiscal Responsibility Act of 1982," was enacted on September 3, 1982. Section 283 of this act doubles the tax rates on both small and large cigarettes, and also imposes a floor stocks tax. These provisions take effect on January 1, 1983. All cigarettes removed from factories or imported on and after that date, but before October 1, 1985, will be subject to the higher tax rates. (Under the terms of this law, the cigarette tax rates are scheduled to revert back to the present rates on October 1, 1985.)

Floor Stocks Tax

The floor stocks tax is a one-time tax, equal to the difference between the old and the new tax rates. It is imposed on all Federally taxpaid or taxdetermined cigarettes that are held for sale on the first moment of January 1, 1983, by any person, with the exception of cigarettes in retail stocks held at the place where they are intended to be sold at retail. The exemption for retailers was intended by Congress to apply only to cigarettes held for sale at a place where consumers may ordinarily come to buy them. This exemption is broad enough to include cigarettes in storage facilities that are within or that form an integral part of the retail premises, at the same physical location. However, the exemption does not apply to cigarettes held by retailers in warehouses or other similar facilities located away from the retail premises, where retail consumers do not have regular access to them. Cigarettes held by retailers in these separate facilities are subject to the floor stocks tax in exactly the same manner as are cigarettes held for sale by wholesalers and manufacturers. Cigarettes in vending machines are considered to be retail stocks and are exempt from floor stocks tax, unless the vending machines are in a storage facility that is normally inaccessible to consumers. Military exchanges, commissaries, and other government affiliated stores that sell cigarettes subject to Federal excise taxes must pay floor stocks tax on cigarettes (other than exempt retail stocks as described) in the same manner as any private commercial enterprise.

Manufacturers, importers, and wholesalers, who are not also retailers, are liable for floor stocks tax irrespective of the location where their cigarettes are held. As for manufacturers and importers, the floor stocks tax applies only to cigarettes that were taxpaid or tax-determined before January 1, 1983. Cigarettes that are taxpaid or tax-determined on or after that date are subject to the increased tax rates, but are not subject to the floor stocks tax.

Liability for the floor stocks tax must be established by a physical inventory. This physical inventory will be the basis for establishing the number of cigarettes held subject to the floor stocks tax, as of the first moment of January 1, 1983. If the taxpayer prefers not to take a physical inventory on New Years's Day, it may be taken any time between December 23, 1982, and January 8, 1983. (Or, if the business is closed before December 23 and will remain closed for the rest of the year, the inventory may be taken on the last business day of 1982.) If the physical inventory is not taken between the end of the last business day of 1982 and the beginning of the first business day of 1983, it must be reconciled to January 1, and supported by records of all receipts and dispositions between January 1 and the date of the inventory.

Every person subject to the floor stocks tax must take the required physical inventory and prepare a floor stocks tax return. Tax returns will be available by December 1, 1982, and may be obtained from any ATF regional office or from the Procedures Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226; telephone: (202)566-7602. The tax return must be filed on or before January 18, 1983.

Ordinarily, full payment must accompany the tax return. However, if financial hardship would result from paying the full amount at that time, and the taxpayer so certifies in writing on his tax return, then payment of all or a part of the floor stocks tax may be postponed for as much as 30 days (that is, until February 17, 1983). The customary penalties for failure to pay tax will not be imposed in such circumstances; however, interest must be paid at the rate of 16% per annum, compounded daily from January 18, 1983, until the tax is paid. In all cases, the tax return must be filed by January 18, 1983. If a return (with or without payment) is not filed on or before January 18, 1983, the 5% per month penalty imposed by law for failure to file a return may be assessed. However, neither the failure-to-file nor the failure-to-pay penalty will be imposed if the taxpayer can show that his failure was due to reasonable cause and not to willful neglect. Nevertheless, interest must be paid even if a penalty is not imposed.

If, due to financial hardship, a return is not accompanied by full payment, the Internal Revenue Service will endeavor to mail to the taxpayer a statement indicating the amount of tax plus the interest that will be due as of February 17, 1983. However, if for any reason this statement is not received, the taxpayer is still responsible for paying the correct amount on or before February 17, 1983. If the amount indicated on the statement is paid before February 17, 1983, IRS will refund to the taxpayer a proportionate amount of the interest.

If by February 17, 1983, a taxpayer does not make full payment, additional processing of the return will be handled by the Internal Revenue Service in accordance with the provisions of Part V of the Internal Revenue Manual. The interest imposed by law continues to accrue until full payment is made, and the penalties for failure to pay tax may be applicable.

If any underpayment of floor stocks tax is due to fraud, there is a penalty of 50% of the amount of the underpayment, plus 50% of the interest payable on the portion of the underpayment attributable to fraud. (See 26 U.S.C. 6653). The Internal Revenue Code also prescribes criminal penalties, including fines and/or imprisonment, which are applicable to this floor stocks tax.

Administrative Procedure Act

Because the tax rate increase and floor stocks tax take effect on January 1, 1983, and require immediate taxpayer planning and advance implementation with regard to inventories, method of taxpayment and recordkeeping by wholesalers and distributors not now required to pay such taxes, it is hereby found to be impracticable to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b). Accordingly, the amendments made by this document shall be effective on January 1, 1983.

Executive Order 12291

This document is not a major rule within the meaning of Executive Order 12291, 46 FR 13193 (1981), because the economic effects of the increased cigarette tax rates and the floor stocks tax flow directly from Pub. L. 97-248 and not from this regulation. Therefore, it is found that this regulation will not cause:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this document, because it was not required to be preceded by a general notice of proposed rulemaking under 5 U.S.C. 553, and because the revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any significant secondary or incidental effects, and any significant reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Drafting Information

The principal drafter of this document is Steven C. Simon of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, many other people from ATF and from other offices in the Department of the Treasury participated in the development of these regulations.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and Cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, U.S. possessions, Warehouses.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, U.S. possessions, Warehouses.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds.

Authority and Issuance

This document is issued under the authority contained in 26 U.S.C. 7805. Accordingly, the regulations in 27 CFR Parts 270, 275, and 296 are amended as follows:

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

Paragraph A. Section 270.23 is revised to reflect the increased tax rates prescribed by Pub. L. 97-248. As revised, § 270.23 reads as follows:

§ 270.23 Cigarette tax rates.

On cigarettes, manufactured in or imported into the United States, the following taxes are imposed by law:

(a) *Cigarettes removed before January 1, 1983, and on or after October 1, 1985:*

(1) *Small cigarettes.* $4 per thousand.

(2) *Large cigarettes.* $8.40 per thousand; except that where such cigarettes are more than 6½ inches in length, the rate of tax is $4 per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(b) *Cigarettes removed on or after January 1, 1983, but before October 1, 1985:*

(1) *Small cigarettes.* $8 per thousand.

(2) *Large cigarettes.* $16.80 per thousand; except that where such cigarettes are more than 6½ inches in length, the rate of tax is $8 per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1414, as amended (26 U.S.C. 5701))

PART 275—IMPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

Par. B. Section 275.32 is revised to reflect the increased tax rates prescribed by Pub. L. 97-248. As revised, § 275.32 reads as follows:

§ 275.32 Cigarettes.

On cigarettes imported or brought into the United States, the following internal revenue taxes are imposed by law:

(a) *Cigarettes removed before January 1, 1983, and on or after October 1, 1985:*

(1) *Small cigarettes.* $4 per thousand.

(2) *Large cigarettes.* $8.40 per thousand; except that where such cigarettes are more than 6½ inches in length, the rate of tax is $4 per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(b) *Cigarettes removed on or after January 1, 1983, but before October 1, 1985:*

(1) *Small cigarettes.* $8 per thousand.

(2) *Large cigarettes.* $16.80 per thousand; except that where such cigarettes are more than 6½ inches in

length, the rate of tax is $8 per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1414, as amended (26 U.S.C. 5701)

PART 296—MISCELLANEOUS REGULATIONS RELATING TO CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

Par C. The Table of Contents of Part 296 is revised to add the subpart and section titles of Subpart H. As revised, the Table of Contents is as follows:

* * * * *

Subpart H—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 1983

Sec.

296.171 Scope of tax.
296.172 Rate of tax.
296.173 Payment of tax.
296.174 Return.
296.175 Inventory.
296.176 Retention of records.
296.177 Refunds of floor stocks tax.
296.178 Penalties and interest.
296.179 Authority of ATF officers.

Par. D. A new Subpart H is added to Part 296. As added, Subpart H reads as follows:

Subpart H—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 1983

Authority: Section 283, Pub. L. 97-248, 96 Stat. 568, or as otherwise noted.

§ 296.171 Scope of tax.

(a) *General.* The floor stocks tax is imposed on all Federally taxpaid or tax-determined cigarettes, not exempt under paragraph (b) of this section, which at the first moment of January 1, 1983, are held by any person for sale. Cigarettes subject to floor stocks tax are regarded as held by the one who owns them at the first moment of January 1, 1983, although at that time the articles may be in transit to the owner, or in a warehouse, storeroom, or distributing depot, and shall be included in the return and inventory of the owner. If ownership does not pass to the consignee until delivery, cigarettes in transit at the first moment of January 1, 1983, shall be regarded as owned or held by the consignor at that time.

(b) *Exempt retail stocks.* The floor stocks tax is not imposed on cigarettes in retail stocks held on the first moment of January 1, 1983, at the place where intended to be sold at retail. This exemption applies only to cigarettes held by retailers for sale at the location where consumers normally come to buy them. Cigarettes held by retailers in storage facilities that are within or that form an integral part of the retail facility, at the same physical location, are exempt under this paragraph. However, cigarettes held by retailers in transit, or in storage facilities that are not physically part of the retail premises, are not exempt.

(c) *Wholesalers, manufacturers, and other persons.* Manufacturers, distributors, wholesalers, and subjobbers, who are not also retailers, are subject to floor stocks tax on all Federally taxpaid or tax-determined cigarettes held by them, without regard to the place where the cigarettes are held. The floor stocks tax does not apply to cigarettes held in ATF or Customs bond on the first moment of January 1, 1983.

§ 296.172 Rate of tax.

(a) *Small ("Class A") cigarettes.* The rate of floor stocks tax applicable to small cigarettes is $4 per thousand. This rate is equal to the increase in the rate of tax on small cigarettes prescribed by section 283(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982. The term "small cigarettes" means cigarettes weighing not more than 3 pounds per thousand, and includes the usual king, 100 mm, and 120 mm sizes of cigarettes.

(b) *Large ("Class B") cigarettes.* The rate of floor stocks tax applicable to large cigarettes is $8.40 per thousand; except that for large cigarettes more than 6½ inches long, the rate is the same as for small cigarettes, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette. This rate is equal to the increase in the rate of tax on large cigarettes prescribed by section 283(a)(2) of the Tax Equity and Fiscal Responsibility Act of 1982. The term "large cigarettes" means cigarettes weighing more than 3 pounds per thousand, and includes the unusually large cigarettes such as those sometimes referred to as the "Banquet" size.

§ 296.173 Payment of tax.

(a) *General.* The floor stocks tax is payable by every person who holds for sale, at the first moment of January 1, 1983, Federally taxpaid or tax-determined cigarettes, except those retail stocks exempt under § 296.171(b). Except as provided in paragraph (b) of this section, the tax shall be paid on or before January 18, 1983, and shall accompany the floor stocks tax return. Checks and money orders shall be made payable to the Internal Revenue Service, and shall show the taxpayer's name and employer identification number (or social security number).

(b) *Payment in case of financial hardship—*

(1) *Payment.* If financial hardship would result from payment of the entire floor stocks tax on or before January 18, 1983, payment of part or all of the tax may be deferred. In order to defer payment, a taxpayer shall certify on his floor stocks tax return that financial hardship would result from payment of the full amount. Such a taxpayer shall include with his return as much of the floor stocks tax as he is able to pay without hardship. The remainder, with interest as prescribed in § 296.178(b), shall be paid not later than February 17, 1983. As provided in 26 U.S.C. 7502, if the cover (envelope), in which any payment is mailed, is postmarked on or before the date prescribed for payment, then the payment shall be considered to have been timely made. If a statement has been received from the Internal Revenue Service indicating the amount of tax due plus interest, that statement shall be enclosed with payment of the amount indicated. If no such statement has been received, the payment shall be identified as pertaining to "cigarette floor stocks tax," and shall show the taxpayer's name and employer identification number (or social security number). In no case shall any taxpayer be exempt from timely filing of his floor stocks tax return.

(2) *Financial Hardship.* For the purposes of this subpart, the term "financial hardship" means a financial condition in which the taxpayer's ability to meet his normal business expenses is placed in jeopardy.

§ 296.174 Return.

(a) *General.* Every person who holds for sale, at the first moment of January 1, 1983, Federally taxpaid or tax-determined cigarettes which are not exempt retail stocks under § 296.171(b), shall make and file a return for the cigarettes so held. The return shall be made on ATF Form 5200.18, Floor Stocks Tax Return—Cigarettes. The return shall be prepared in duplicate, in accordance with the headings and instructions on the form. The original shall be filed no later than January 18, 1983, with the Internal Revenue Service at the address indicated on the form. The copy shall be retained by the taxpayer as prescribed in § 296.176. Subject to 26 U.S.C. 7502 any floor stocks tax return that is postmarked on or before January 18, 1983, shall be considered to have been timely filed.

(b) *Consolidated return.* Where cigarettes subject to floor stocks tax are held at more than one location or place of business, the taxpayer shall file either a separate return for each place of business, or a consolidated return. If a consolidated return is filed, the taxpayer shall show, on the form or an attachment, the address of each place of business where he held cigarettes subject to floor stocks tax, the name of the proprietor of each such place of business (if different from the taxpayer) and the number of cigarettes so held at each such place.

§ 296.175 Inventory.

The floor stocks tax liability required to be shown on the floor stocks tax return shall be established by a complete physical inventory. The inventory shall be the basis for establishing the quantity of all large and small cigarettes, subject to floor stocks tax, held as of the first moment of January 1, 1983. Cigarettes in transit on the first moment of January 1, 1983, shall be included in the inventory of the person—either consignor or consignee—who is the legal owner of the articles at that moment. The inventory shall be recorded in writing as it is being taken by the taxpayer and retained as prescribed in § 296.176. The record of inventory shall show the quantities of large and small cigarettes held for sale by the taxpayer at the first moment of January 1, 1983, except those retail stocks exempt from floor stocks tax under § 296.171(b). Quantities in transit shall be recorded separately from quantities actually on hand. The record of inventory shall show the taxpayer's name and the address of the place of business where the cigarettes are held. The record of inventory shall include complete and accurate information showing the details of the inventory, when, and by whom the inventory was taken. If the inventory was verified by anyone other than the person taking it, the name and title of that other person shall also be shown. The physical inventory shall be taken no later than January 8, 1983, and no earlier than December 23, 1982. However, if any place of business is closed prior to December 23, 1982, and remains closed for the duration of 1982, then the physical inventory for that place of business may be taken following the close of business on the last business day of 1982. If the physical inventory is not taken between the close of business on the last business day of 1982 and the beginning of business on the first business day of 1983, the record of inventory shall be reconciled to the first moment of January 1, 1983, and shall include complete supporting records of receipt and disposition.

(68A Stat. 731, as amended (26 U.S.C. 6001))

§ 296.176 Retention of records.

Every person liable for floor stocks tax shall keep the copy of his floor stocks tax return at his place of business covered thereby, or, in the case of a consolidated return, at his principal place of business. The record of physical inventory shall be kept at the place of business to which the inventory pertains. In the case of a consolidated return, a copy of the record of inventory shall also be kept at the taxpayer's principal place of business. Such documents and records shall be retained for at least 3 years after the date of filing of the floor stocks tax return, and shall be available for inspection by ATF officers. The regional regulatory administrator may also require these documents and records to be retained for an additional period of not more than 3 years in any case where he deems such retention to be necessary or advisable for the protection of the revenue.

§ 296.177 Refunds of floor stocks tax.

A claim for refund may be filed by any person who has paid a floor stocks tax on cigarettes and who claims that he made an overpayment of that tax. Such a claim shall be filed on IRS

Form 843, contain the information required by the form, and be supported by a statement of the facts and evidence upon which the claim is based. The claim shall be filed either with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, for the region in which the tax was paid, or with the Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. Claims filed under this section shall comply with the provisions of Subpart A of this part.

§ 296.178 Penalties and interest.

(a) *Penalties.* All civil and criminal penalties and forefeiture provisions of the Internal Revenue Code (Title 26 U.S.C.), which are applicable to excise taxes on cigarettes, are applicable also to floor stocks tax. However, if a taxpayer has certified under § 296.173(b) that financial hardship would result from timely payment of the full floor stocks tax due, the penalties prescribed by law for failure to pay tax shall not be assessed if the taxpayer subsequently pays the full amount of the tax on or before February 17, 1983.

(b) *Interest.* Interest shall accure at the rate of 16% per annum, compounded daily, on all floor stocks tax that is not paid on or before January 18, 1983. Interest shall be paid regardless of whether the taxpayer has postponed payment of the tax, due to financial hardship under § 296.173(b). Interest shall accrue from January 18, 1983, to the date of payment. (See 26 U.S.C. 6601.)

(68A Stat. 817, as amended (26 U.S.C. 6601); sec. 7, Pub. L. 93-625, 88 Stat. 2114, as amended (26 U.S.C. 6621); sec. 344, Pub. L. 97-248, 96 Stat. 635 (26 U.S.C. 6622))

§ 296.179 Authority of ATF officers.

(a) *Entry of premises; penalties for interference.* Any ATF officer may enter, in the daytime, any premises where cigarettes subject to floor stocks tax are kept, so far as may be necessary for the purpose of examining such products. When such premises are open at night, any ATF officer may enter them, while so open, in the performance of his official duties. If the owner or other person in charge of such premises refuses to admit any ATF officer, or to permit him to examine such cigarettes, he shall be liable to the penalty prescribed by 26 U.S.C. 7342. Further, if anyone corruptly or by force or threats of force, attempts to intimidate or impede any ATF officer in the performance of his official duties, he shall be liable to the penalty prescribed by 26 U.S.C. 7212.

(b) *Other authority.* For the purpose of ascertaining, determining, or collecting floor stocks tax, or of inquiring into any offense connected with the administration or enforcement of floor stocks tax:

(1) Any ATF officer may examine any books, papers, records, or other data which may be relevant or material to that inquiry, and may take any testimony of any person concerned, under oath, as may be relevant or material to the inquiry.

(2) Any ATF officer, to whom authority has been delegated by § 70.22 of this chapter, in any case where there is no Justice Department referral, may issue summonses compelling the production of any books of account or other data pertaining to liability for floor stocks tax, or the appearance of any person liable for floor stocks tax or having in his possession such books of account or data, or any other appropriate person, at a place and time stated in the summons.

(68A Stat. 855, 872, 901, as amended, 903, as amended (26 U.S.C. 7212, 7342, 7602, 7606); sec. 204, Pub. L. 85-859, 72 Stat. 1429, as amended (26 U.S.C. 7608))

Signed: October 1, 1982.

STEPHEN E. HIGGINS,
Acting Director.

Approved: October 13, 1982.

J. M. WALKER, JR.,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on November 17, 1982; 8:45 a.m., and published in the Federal Register for November 18, 1982, 47 F.R. 51861)

Bureau Rulings PART II

Subpart A—ALCOHOL

27 CFR 19.11: MEANING OF TERMS (Liquor Bottle)

(Also 194.11, 250.11, 251.11)

Polyethylene terephthalate (PET) containers are approved for bottling distilled spirits when the containers meet the requirements of the Federal Alcohol Administration Act and the materials used to construct the bottles meet Food and Drug Administration specifications for the packaging of distilled spirits.

ATF Rul. 82-12

The Bureau of Alcohol, Tobacco and Firearms has been requested to approve the use of polyethylene terephthalate (PET) as a suitable material for the manufacturer of liquor bottles.

Section 5301(a) of Title 26, United States Code, provides that the Secretary may regulate the kind of containers designed or intended for use in the sale of distilled spirits. Sections 19.11, 194.11, 250.11 and 251.11 of Title 27, Code of Federal Registrations, provide for liquor bottles to be made of glass or earthenware or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

The Bureau is aware of the need to recognize advancing technology which provides materials adaptable or developed for packaging distilled spirits. At the same time, the Bureau is aware of its responsibilities for protecting the Federal excise tax revenues, as prescribed by the Internal Revenue Code (Title 26, U.S.C., Chapter 51); for insuring an orderly marketplace, in accordance with the requirements of the Federal Alcohol Administration Act (Title 27, U.S.C., section 205(e)); and for protecting the environment, pursuant to the National Environmental Policy Act (Title 42, U.S.C., section 4332).

The Bureau recognizes that, in some minor instances, a proof gain of up to two degrees of proof per year (and a corresponding water volume loss) may occur. However, this effect can be minimized by avoiding high storage temperatures, by insuring that the wall thickness of PET containers is uniform, and by insuring market turnover. In any event, ATF has concluded that this characteristic of PET packaging poses no jeopardy to the revenue because the taxable commodity, the alcohol, does not travel through the package wall. The quantity of alcohol does not change between the time of bottling and the point of tax determination. Therefore, it has been determined that the use of PET for liquor bottles provides adequate protection to the excise tax revenue and is a suitable material for this use.

The consumer obtains the same amount of alcohol contained in the product at the time of bottling, since only water is lost. Since the same amount of alcohol is contained in the product with only a very minor, if any, increase in proof, the label on the product provides adequate information to the consumer regarding alcohol content.

In accordance with the requirements imposed by the National Environmental Policy Act, the Bureau prepared an assessment of the projected effect on the environment of PET liquor bottles. The conclusion reached on the pertinent issues was that neither container use nor disposal would have a significant environmental impact.

Held, polyethylene terephthalate (PET) liquor bottles conforming to the following specifications may be used as containers for distilled spirits:

(1) The bottles must be rigid or semi-rigid with molded shape or design which cannot be altered by pressure without damage to the bottle, and the wall thickness of the bottle must be as uniform as possible;

(2) The bottle must be manufactured in an approved standard of fill; and

(3) The material used to construct the PET bottle must meet the Food and Drug Administration's health and safety specifications for the packaging of alcoholic beverages for consumption as promulgated in the Code of Federal Regulations.

27 CFR 194.11: MEANING OF TERMS (Liquor Bottle)

Polyethylene terephthalate (PET) containers are approved for bottling distilled spirits. See ATF Rul. 82-12, above.

27 CFR 250.11: MEANING OF TERMS (Liquor Bottle)

Polyethylene terephthalate (PET) containers are approved for bottling distilled spirits. See ATF Rul. 82-12, above.

27 CFR 251.11: MEANING OF TERMS (Liquor Bottle)

Polyethylene terephthalate (PET) containers are approved for bottling distilled spirits. See ATF Rul. 82-12, above.

Subpart B—TOBACCO

27 CFR 270.282: ALLOWANCE OF TAX

(Also 270.283 and 275.163)

Claims filed under 26 U.S.C. 5705 for allowance, credit, or refund of tax on cigarettes lost, destroyed, or withdrawn from the market may be allowed only if the claimant paid the tax to which the claim relates.

ATF Rul. 82-11

The Bureau of Alcohol, Tobacco and Firearms has been asked whether a manufacturer of cigarettes is entitled to a refund of floor stocks tax under the following circumstances.

Situation # 1: A manufacturer of cigarettes removes small cigarettes from bond prior to January 1, 1983, and pays a tax of $4 per thousand on the cigarettes. The cigarettes are delivered to a wholesaler who holds them for sale on January 1, 1983. The wholesaler pays a floor stocks tax of $4 per thousand. The cigarettes are subsequently returned to the manufacturer who replaces them with cigarettes removed from bond after January 1, 1983, on which the manufacturer pays a tax of $8 per thousand.

Situation # 2: The same as situation # 1 except that the manufacturer reimburses the wholesaler for the floor stocks tax paid by the wholesaler.

Section 283 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, in addition to doubling the rate of tax on cigarettes removed from bond after January 1, 1983, and before October 1, 1985, imposed a tax on certain cigarettes removed from bond prior to January 1, 1983, which are held for sale on such date. The person holding the cigarettes on January 1, 1983, is liable for the floor stocks tax.

Section 5705 of the Internal Revenue Code of 1954 provides that a refund of any tax imposed by Chapter 52 shall be made to a manufacturer, importer, or export warehouse proprietor, on proof satisfactory to the Secretary, that the claimant manufacturer, importer, or export warehouse proprietor paid the tax on the cigarettes withdrawn by him from the market.

Section 270.283, Title 27, Code of Federal Regulations, provides that taxes paid on cigarettes may be refunded to a manufacurer on proof satisfactory to the regional regulatory administrator that the claimant manufacturer paid the tax on the cigarettes withdrawn by him from the market.

The floor stocks tax is a tax on cigarettes imposed by Chapter 52 of the Internal Revenue Code of 1954. Accordingly, under sections 5705 and 270.283, a manufacturer is entitled to a refund of the floor stocks tax on cigarettes removed by him from the market if he has paid the tax.

Held, with respect to situation # 1, the wholesaler, not the manufacturer, paid the floor stocks tax. Therefore, the claimant manufacturer is not entitled to a refund of the floor stocks tax under the circumstances set forth in situation # 1.

Held further, with respect to situation # 2, the wholesaler is the person who actually remitted the floor stocks tax to the Government and the manufacturer simply reimbursed the wholesaler in respect of such tax. Therefore, the claimant manufacturer is not entitled to a refund of the floor stocks tax under the circumstances set forth in situation # 2.

While the manufacturer may argue that he bore the ultimate financial burden of the floor stocks tax and hence that he is entitled to a refund of the tax, sections 5705 and 270.283 provide that the manufacturer must have "paid" the tax in order to be entitled to a refund thereof. In this case, the wholesaler actually paid the tax to the Government. The manufacturer has not paid the tax but has merely compensated the wholesaler for tax paid by the wholesaler.

Furthermore, under section 5705 and its implementing regulations, a wholesaler is not entitled to a refund of floor stocks taxes paid by him on cigarettes withdrawn from the market because, under the express terms of these provisions, only manufacturers, importers, and export warehouse proprietors are entitled to a refund of taxes paid on cigarettes withdrawn from the market.

This Ruling also applies to claims for refund of tax filed by importers under 26 U.S.C. 5705.

Legislation PART IV

Subpart A—Currently Enacted Legislation

Public Law 97-298
97th Congress, H.R. 6454 [1]
October 12, 1982

An Act to amend title 18, United States Code, to clarify the applicability of offenses involving explosives and fire.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Anti-Arson Act of 1982".

OFFENSES INVOLVING FIRE

SEC. 2. (a) Subsections (e) and (f) of section 844 of title 18, United States Code, are each amended by insertng "fire or" after "by means of" each place it appears.

(b) Section 844(h)(1) of title 18, United States Code, is amended by inserting "fire or" after "uses".

(c) Section 844(i) of title 18, United States Code, is amended by inserting "fire or" after "by means of".

SEC. 3. The Director of the Federal Bureau of Investigation is authorized and directed to classify the offense of arson as a Part I crime in its Uniform Crime Reports. In addition, the Director of the Federal Bureau of Investigation is authorized and directed to develop and prepare a special statistical report in cooperation with the National Fire Data Center for the crime of arson, and shall make public the results of that report.

Approved October 12, 1982.

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[1] House Report No. 97-678, page

Subpart B—Committee Reports

House Report No. 97-678
97th Congress
2d Session

ANTI-ARSON ACT OF 1982

July 28, 1982

Mr. Hughes, from the Committee on the Judiciary, submitted the following report to accompany H.R. 6454.[1]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6454) to amend title 18, United States Code, to clarify the applicability of offenses involving explosives and fire, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THIS LEGISLATION

Under current law, arson type offenses may be investigated and prosecuted by Federal officials only when the damage or destruction to the burned property was caused by means of an explosive (defined in 18 U.S.C. 844(j)). H.R. 6454 amends 18 U.S.C. 844(e), (f), (h) and (i) to provide that, where Federal jurisdiction otherwise exists, damage or destruction caused by fire may also be the subject of Federal prosecution. The jurisdictional circumstances enumerated in these subsections of section 844 (the property is property of the United States, property used in or affecting interstate or foreign commerce, or a threat to damage the property in question is communicated through communication facilities or other instruments of commerce), otherwise remain unchanged.

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[1] Public Law 97-298, page

BACKGROUND

Title XI of the Organized Crime Control Act of 1970, 84 Stat. 956, was designed to provide Federal jurisdiction over the criminal use of explosives (e.g., extortion, terrorism, and revenge).[1] The Secretary of the Treasury is authorized to investigate violations of Title XI and to inspect the site of any accident or fire, in which there is reason to believe that explosive materials were involved (18 U.S.C. 846). The Attorney General and the Federal Bureau of Investigation were also given direct authority to conduct investigations with respect to violations of 18 U.S.C. 844(d), (e), (f), (g), (h), or (i) (18 U.S.C. 846).

Identifying fires caused by explosives is technically difficult. Determining the cause of a deliberately set fire involves an extensive physical and chemical inventory of the debris at the fire scene, and extensive chemical laboratory analysis of the debris. Determining the persons responsible for causing the fire involves laborious analysis of insurance policy applications, records of property transfer, extensive corporate ownership records, balance sheets, profit and loss statements and comparison with information concerning other suspicious fires.

Fire is used extensively not only for the criminal purposes of extortion, terrorism and revenge, but to conceal other crimes such as homicide, and for fraud against insurance companies.[2]

THE PROBLEM IN THE PROSECUTION OF ARSON

The current requirement that the damage be "caused by means of an explosive" results in the allocation of a great deal of investigative resources to proving that fact, even though it has been established that the fire was intentionally set, and the criminal parties may be known.[3] At a hearing on this legislation, a representative of the Department of the Treasury estimated that perhaps 30 percent of the significant arson investigations conducted by BATF have to be discontinued because it appears that proof that the arson was caused by means of an explosive would be too difficult.[4]

A frequent method of burning buildings is by the use of gasoline or other flammable liquids. Several courts have held that gasoline mixed with air is a "mechanical mixture*** that contains any oxidizing and combustible units*** in such proportions*** that ignition by fire*** may cause an explosion." [5] Several courts, including the Court of Appeals for the Ninth Circuit, however, have rejected that theory.[6]

The bill is supported by the Administration. The proposal was endorsed as Recommendation 27 of the Attorney General's Task Force on Violent Crime. The proposal is also supported by the insurance industry.

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[1] Hearings on H.R. 17154, H.R. 16699, H.R. 18573 and Related Proposals to amend title 18 of the United States Code to provide for better control of interstate traffic in explosives, before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Cong., 2d Sess. (1970), Serial No. 29.

[2] Hearings on H.R. 6454, and H.R. 6337, the "Anti-Arson Act of 1982" before the Subcommittee on Crime of the House Committee on the Judiciary, 97th Cong., 2d Sess. (1982).

[3] Id., Testimony of Robert E. Sanders, Assistant Director, Criminal Enforcement, Bureau of Alcohol, Tobacco and Firearms.

[4] Id., Testimony of Robert E. Powis, Deputy Assistant Secretary of the Treasury for Enforcement.

[5] *United States* v. *Poulos*, 667 F.2d (10th Cir. 1982) *See also, United States* v. *Agrillo-Ladlad*, 675 F.2d (7th Cir. 1982), (defendant used naphtha to start fire), and *United States* v. *Hepp*, 656 F.2d 350 (8th Cir. 1981) (fire caused by mixture of methane gas and air).

[6] *United States* v. *Gere*, 662 F. 2d 1291 (9th Cir. 1981). *See also, United States* v. *Birchfield*, 486 F. Supp. 137 (N.D. Tenn. 1980).

HISTORY OF THE ACT

On October 1, 1981, the House Subcommittee on Crime held a hearing on the Administration's proposal to abolish the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury. At that hearing, numerous representatives of the fire fighting profession, the law enforcement profession, and the insurance industry testified that the arson investigations performed by BATF were of critical importance, and if anything, ought to be expanded. (These statements of support for the Federal arson functions were prompted in part by a statement by a spokesman for the Director of the Office of Management and Budget in August 1981, that arson is not an appropriate area for Federal law enforcement.)

On November 19, 1981, H.R. 5043 was introduced by the Chairman of the Subcommittee on Crime, Mr. Hughes, and co-sponsored by Mr. Rodino, Mr. McClory, Mr. Sawyer, and Mr. Sam B. Hall, Jr., to transfer the ATF criminal enforcement responsibilities to the Department of Justice. Section 2 of that bill provided for amending 18 U.S.C. 844(e), (f), (h), and (i). The language of Section 2 was introduced by Mr. Hughes and co-sponsored by Mr. Sawyer, Mr. Rodino, and Mr. Moakley as a separate bill, H.R. 6377 on May 13, 1982.

H.R. 6377 provided a limitation on the jurisdiction of 18 U.S.C. 844(i) with respect to fire to require proof that the subject property was "substantially" damaged or destroyed, if the damage or destruction was by means of fire. At a hearing on H.R. 6377 on May 19, 1982, this provision was criticized as being vague and difficult to establish.[7]

On May 19, 1982, H.R. 6377 was marked up by the Subcommittee on Crime, and the "substantially damaged" limitation was deleted. The bill was ordered reported by the Subcommittee as a clean bill. On May 20, 1982, H.R. 6454, the clean bill, was introduced by Mr. Hughes and co-sponsored by Mr. Sawyer, Mr. Roybal, Mr. Rodino, and Mr. Glickman. On July 20, it was ordered reported favorably by the Committee on the Judiciary, without amendment, by a voice vote.

SECTIONAL ANALYSIS

Section 1 of the bill sets forth the short title, the "Anti-Arson Act of 1982."

Subsection 2(a) of the bill amends subsections (3) and (f) of section 844 of title 18, United States Code to provide that it is an offense to threaten to destroy property, or to kill, injure or intimidate any individual by means of fire, as well as by an explosive, if the threat is communicated by the use of mail, telephone, telegraph or other instrument of commerce (18 U.S.C. 844(e)); or to damage or destroy, by fire, as well as by an explosive, in whole or in part, any property owned, possessed, used or leased by the United States or any institution receiving Federal financial assistance (18 U.S.C. 844(f)).

Subsection 2(b) amends subsection (h)(1) of section 844 of title 18, United States Code, to provide that whoever uses a fire, as well as an explosive to commit any felony which may be prosecuted in a court of the United

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[7] Hearings on H.R. 6454 and H.R. 6377, the "Anti-Arson Act of 1982" before the Subcommittee on Crime of the House Committee on the Judiciary, 97th Cong., 2d Sess. (1982), Testimony of Senator Glenn; Robert E. Powis; Robert E. Sanders; J. C. Mullen, Claims Vice President, Commercial Union Insurance Companies.

States commits an additional offense and shall be subject to a sentence in addition to the sentence for the predicate offense.

Subsection 2(c) amends subsection (i) of section 844 of title 18, United States Code, to provide that whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire as well as by an explosive, any building, vehicle or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce commits an offense.

OVERSIGHT FINDINGS

The Committee makes no oversight findings with respect to this legislation.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operatons.

NEW BUDGET AUTHORITY

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 6454 creates no new budget authority or increased tax expenditures for the Federal Government.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 3(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

FEDERAL ADVISORY COMMITTEE ACT OF 1972

The Committee finds that this legislation does not create any new advisory committees within the meaning of the Federal Advisory Committee Act of 1972.

COST ESTIMATES

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office and estimates that no additional cost to the government will be incurred as a result of enactment of this bill.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 28, 1982.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6454, the Anti-Arson Act of 1982, as ordered reported by the House Committee on the Judiciary, July 20, 1982.

H.R. 6454 would allow federal jurisdiction over cases involving the threat to cause damage or the actual damage or destruction to certain types of property started by fire as well as by explosives. The bill would simplify federal prosecution of such cases by eliminating the current need to prove that the damage to the burned property was caused by means of an explosive. Based on information provided by the Bureau of Alcohol, Tobacco, and Firearms, CBO anticipates that passage of H.R. 6454 might result in prosecution of a greater number of cases in federal courts rather than state courts. However, the bill would simplify the prosecution of arson cases, leading to less investigatory work and less court time per case. CBO estimates that the bill would therefore incur no significant additional cost to the government as a result of enactment of this legislation.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 844 OF TITLE 18, UNITED STATES CODE

§ 844. Penalties

(a) ***

* * * * *

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of *fire or* an explosive shall be imprisoned for not more than five years or fined not more than $5,000, or both.

(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of *fire or* an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years, or fined not more than $20,000, or both; and if death results shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(g) Whoever possesses an explosive in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department or other person responsible for the management of such building, shall be imprisoned for not more than one year, or fined not more than $1,000, or both.

(h) Whoever—

(1) uses *fire or* an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive unlawfully during the commission of any felony which may be prosecuted in a court of the United States.

shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of *fire or* an explosive, any building vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than

$10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

* * * * *

dministrative Matters PART V

Subpart A—Administrative Procedural Practice Regulations

26 CFR 301.6621: DETERMINATION OF RATE OF INTEREST

The adjusted rate of interest on underpayments and overpayments of taxes, as determined under the provisions of section 6621(b) of the Code, will be 16 percent effective January 1, 1983.

Rev. Rul. 82-182

Under the provisions of section 6621 of the Internal Revenue Code, as amended by the Tax Equity and Fiscal Responsibility Act of 1982, section 345(a), 1982-38 I.R.B. 4, 115, the Secretary is required to establish an adjusted rate of interest not later than October 15, 1982, to become effective January 1, 1983, if the adjusted prime rate charged by banks during the 6 month period ending on September 30, 1982 (rounded to the nearest full percent) differs from the interest rate under section 6621 in effect on September 30, 1982.

Section 6621(c) of the Code defines the term "adjusted prime rate charged by banks" as the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System.

The Board of Governors of the Federal Reserve System has determined that the average predominant prime rate quoted by commercial banks to large businesses during the 6 month period ending September 30, 1982, was 15.61 percent. Rounded to 16 percent, this differs from the rate of 20 percent in effect on September 30, 1982. Accordingly, an adjusted rate of interest of 16 percent per annum is established under section 6621(b) of the Code. The adjusted rate will take effect on January 1, 1983, and will apply to amounts outstanding on that date or arising thereafter.

Subpart C—Treasury Department Orders and Delegation Orders

Delegation Order ATF O 1100.77D

Authority to Affix the Seal of the Department of the Treasury

PURPOSE: This order sets forth delegation of authority to affix the seal of the Department of the Treasury.

CANCELLATION: ATF O 1100.77C, Delegation Order—Authority to Affix the Seal of the Department of the Treasury, dated May 14, 1980, is canceled.

DELEGATION:

a. Pursuant to the authority delegated to the Director, Bureau of Alcohol, Tobacco and Firearms by Treasury Department Order 101-12, dated October 12, 1979, those officials listed below are hereby redelegated authority to affix the seal of the Department of the Treasury in the authentication of originals and copies of books, records, papers, writing, and documents of the Bureau, for all purposes, including the purposes authorized by 28 U.S.C. 1733(b):

(1) Assistant Director (Regulatory Enforcement)

(2) Chief, Trade and Consumer Affairs Division

(3) Chief, Commodity Classification Branch.

(4) Chief, Regulations and Procedures Division

(5) Chief, Research and Regulations Branch

(6) Regional Regulatory Administrators

(7) Chief, Investigations Division

(8) Assistant Director (Administration)

(9) Chief, Administrative Programs Division

(10) Chief, Protective Programs and Services Branch

(11) Manager, ATF Distribution Center

(12) Regional Administrative Officers

(13) Assistant Director (Technical and Scientific Services)

(14) Chief, Technical Services Division

(15) Chief, National Firearms Act Branch

b. This authority may not be redelegated.

FOR INFORMATION CONTACT: Robert G. Hardt, Procedures Branch, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20226.

EFFECTIVE DATE: This delegation order becomes effective on September 27, 1982.

Approved September 10, 1982.
STEPHEN E. HIGGINS,
Acting Director.

(Filed by the Office of the Federal Register on September 24, 1982; 8:45 a.m., and published in the Federal Register for September 27, 1982, 47 F.R. 42488)

Announcements

PART VI

Announcement 82–37

Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected as identified by the Administrator, Federal Emergency Management Agency (FEMA) are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the data the FEMA identifies the specific disaster area.

Date Disaster Areas Identified by FEMA	*Affected Areas*	*Type of Disaster*
September 22, 1982	TENNESSEE County of: Gibson	Severe storms and flooding beginning on or about September 12 thru 15, 1982
September 29, 1982	KENTUCKY County of: Letcher	Severe storms and flooding beginning on or about September 14, 1982
November 27, 1982	HAWAII Counties of: Kauai and Honolulu	High winds, rain, wave action and flooding due to hurricane Iwa beginning on or about November 23, 1982

Announcement 82–38

List of Explosive Materials

Pursuant to the provisions of Section 841(d) of Title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco and Firearms, must publish and revise at least annually in the Federal Register a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This Chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code.

Accordingly, the following is the 1982 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the Federal Register and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is *not* all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in Section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated September 1, 1981 (46 F.R. 43915).

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX]
Cycloto.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM
Dipicryl sulfone.
Dipicrylamine.
DNDP [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixture containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitro form).
Explosive nitro compounds of aromatice hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G
Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H
Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene-2,4-6-8,-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I
Igniter cord.
Igniters.

K
KDNBF [potassium dinitrobenzo-furoxane].

L
Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M
Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Minol-2 [40% TNT, 40% ammonium Nitrate, 20% aluminum].
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N
NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compunds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN)
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O
Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P
PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (explosive grade).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.

R
RDX [cyclonite, hexogen, T4, cycle-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5,-trinitro-S-triazine].

S
Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.

Sodium amatol.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.Styphnic acid.

T

Tacot [tetranitro-2,3,5,6,-dibenzo-1,3a,4,6a-tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN (trimethylolethane trinitrate).
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethyl orthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).

X

Xanthamonas hydrophilic colloid explosive mixture.

Announcement 82–39

Curio and Relic Determinations

ATF has reexamined its position regarding the publication of curio and relic determinations as ATF Rulings.

Title I of the Gun Control Act of 1968 and the implementing regulations do not require the publication of rulings for announcing curio and relic determinations. Therefore, the Bureau will commence to publish them as ATF Announcements.

Announcement 82–40

Curio or Relic Determinations

The Bureau has made determinations since 1980 that the following items are curios or relics and should be added to the 1980 lists. These items are listed in four categories as curios or relics according to definitions under 18 U.S.C. 921(a)(3) and 27 CFR 178.11, 178.26 and 179.11.

Determinations in Categories 1 and 2 merely classify the firearms and ammunition as curios or relics and thereby authorize licensed collectors to acquire, hold or dispose of them as curios or relics.

Category 3 are those National Firearms Act (NFA) weapons excluded from the provisions of the NFA because they are collectors items and not likely to be used as weapons. In addition, they are classified as curios or relics and, therefore, licensed collectors are authorized to acquire, hold or dispose of them as curios or relics. It is requested that persons having any of these exempted firearms, registered with ATF, notify our NFA Branch so that the National Firearms Registration and Transfer Record can be annotated to show that the particular firearms no longer require registration.

Category 4 are those NFA weapons which are still subject to all the controls under the NFA; however, licensed collectors may acquire, hold or dispose of them as curios or relics.

Category 1

Colt, Buffalo Bill Historical Center, Winchester Museum Special Issue, Colt Single Action Revolver, Caliber .44-40, Serial Number 21BB.
Colt American Combat Companion, Enlisted Man's Model, caliber .45ACP pistol marked "1911 American Combat Companion 1981, 70 years at America's Side."

Colt American Combat Companion, General Officers Model, caliber .45ACP pistol marked "1911 American Combat Companion 1981, 70 Years at America's Side." Serial numbers 1 STAR, 2 STAR, 3 STAR, 4 STAR, and 5 STAR.

Colt American Combat Companion Officers Model, caliber .45ACP pistol marked "1911 American Combat Companion 1981, 70 Years at America's Side."

Colt Custom Gun Shop's "Custom Edition Sheriff's Model" Single Action Revolver, Caliber .45 Colt, Serial Number 1 of 35.

Colt Detective Special Model Revolver, Caliber .38, Serial Number 418162, owned by Colonel Charles A. Lindbergh.

Colt Match Target Woodsman Semiautomatic Pistol, Caliber .22lr., Serial Number 128866S, owned by Ernest Hemingway.

Colt Official Police Revolver, Silver Inlaid and Engraved by Wilbur A. Glahn, Caliber .38, Serial Number 583469.

Colt Python Revolver, .357 Magnum Caliber, Engraved and Inlaid with the Crest of the United Arab Emirates.

Colt Single Action Revolvers, Caliber .45, Engraved and Silver Inlaid for Presentation to Chuck Connors, Serial Numbers CCI and CC2.

Colt, Liege Number 1 Colt Single Action Army Revolver, Caliber .45, Serial Number Liege No. 1.

Fabrique Nationale Model SAFN49 semiautomatic rifles, any caliber.

Holland and Holland Royal Double Barrel Shotgun, 410 Gauge, Serial Number 36789.

Luger, Mauser Parabellum, semiautomatic pistol, 7.65mm or 9mm Luger, 4 and 6 inch barrel, Swiss pattern with grip safety and the American Eagle stamped on the receiver. Made from 1970 to 1978.

Mauser manufactured P 38 pistols, caliber 9mm, marked svw 46.

Mauser Model 1935 rifle 7x57mm caliber with Chilean Police Markings.

Parker shotguns, all grades, all gauges, produced by Parker Brothers, Meriden, Connecticut, and Remington Arms, Ilion, New York, from 1899 through 1945.

James Purdy Over and Under Shotgun, 12 Gauge, Serial Number 2689, Engraved and Gold Inlaid.

Ruger Falling Block Long Range Creedmore rifle, caliber .45 (Sharps), Serial Number 130-06888, The Amber Silver-Jubilee.

Smith and Wesson 125th Anniversary Commemorative, Model 25, revolver, caliber .45. Marked "Smith & Wesson 125th Anniversary" and manufactured in 1977.

U.S. rifles, caliber .30, Model M-1, original military issue only, produced prior to 1956.

Walther Model PP & PPK semiautomatic pistols, in all calibers, manufactured in France and marked "Manchurin".

Winchester Model Bat Masterson commemorative, Model 94.

Winchester Calgary Stampede Commemorative, Model 94 carbine, caliber .32 Winchester Special.

Winchester Canadian Pacific Centennial, Model 94 carbine caliber .32 Winchester Special.

Winchester, John Wayne Commemorative, Model 94 carbine, caliber .32-40 W.C.F.

Winchester, John Wayne Commemorative (Canadian Issue), Model 94 carbine, caliber .32-40.

Winchester "Limited Edition I", Model 94.

Winchester Model 62 selfloading rifles, caliber .22 rimfire.

Winchester Models 64 and 65 lever-action rifles.

Winchester Model 1892 Carbine, Caliber .44-40, Serial Number 985658, used in the Television Series "The Rifleman." Silver Plate on Stock Engraved "The Rifleman/Chuck Connors Winchester No. 985658."

Winchester Model 21 Grand American Double Barrel Shotgun, Caliber 20 and 28 Gauge, Serial Number 32984, Engraved Custom Built by Winchester for Philip S. Rane.

Winchester Presentation Model 94 Carbine, Caliber .30-30, Serial Number 2405000. Gold Inlaid "Presented to Chuck Connors 'The Rifleman' By Winchester Western."

Winchester The Oliver F. Winchester commemorative, Model 94.

Winchester One of One Thousand European Rifle commemorative Model 94.

Winchester Saskatchewan Diamond Jubilee Carbine commemorative, Model 94.

Winchester United States Border Patrol Commemorative, Model 94 carbine, caliber .30-30.

Category 2

1. Foreign Military Rifle Cartridges
   - .557x450 caliber Martini-Henry
   - 6.5x54Rmm Mannlicher (Dutch and Romanian)
   - 6.5x55mm Swedish Mauser
   - 6.5x58mm Portuguese Vergueiro
   - 6.5x52mm Italian (Mannlicher-Carcano)
   - 7.5x54 Swiss Schmidt-Rubin
   - 7.62x54Rmm Russian
   - 8x50Rmm Lebel
   - 8x50Rmm Austrian Mannlicher
   - 8x58Rmm Danish Krag
   - 10.4x38Rmm Swiss Vetterli M69/81
   - 10.4x47Rmm Italian Vetterli M70
   - 11.15x60Rmm (.43) Mauser

2. European Sporting Rifle Cartridges
   - 7x57Rmm Muser
   - 7.92x57Jmm (.318" diameter) Mauser

3. &
4. (No additions)

5. U.S. Rimfire Cartridges
    - .25 rimfire
    - .32 rimfire
    - .38 rimfire

6. U.S. Centerfire Rifle Cartridges
    - 6mm Lee Navy
    - .33 WCF
    - .32-40 Winchester John Wayne
    - .33-56
    - .38-72
    - .40-72
    - .40-82
    - .405 Winchester

Category 3

Marlin Baby Carbines, having barrels measuring less than 15 inches in length, with specific serial numbers manufactured from 1883 to 1906. For information on actual serial numbers, please write to the Firearms Technology Branch, Room B230, 1200 Pennsylvania Ave., NW. Washington, DC 20226.

Marlin Model 1894 carbine, caliber .44-40 with 15 inch barrel, serial number 401374.

Marlin Model 1894 carbine, caliber .44 W.C.F. serial number 423099, with 15-¼ inch barrel.

Mauser pistol-carbine, Model 1896, 7.63mm, with shoulder stock and 11 ¾ inch to 16 inch barrel.

Winchester Model 1873 carbine, serial number 719510B, caliber .44 WCF, with 14 inch barrel.

Winchester, Model 1873, carbine, serial numbers 247094B and 336514B caliber .44 WCF with original 15-inch barrel.

Winchester, Model 92 carbine, serial number 905158, caliber .44-40, with original 15 inch barrel.

Winchester Model 1892 carbine, caliber .25-20 WCF, with 14 inch barrel, serial numbers 765952 and 818777.

Winchester, Model 1892 carbine, serial number 615287 and 826022, caliber .38 WCF with 14 inch barrel.

Winchester, Model 1892 carbine, serial number 850811, caliber .38 WCF, with 14 inch barrel.

Winchester, Model 1892 carbine, serial numbers 179252, 842788 and 843000, caliber .38 WCF, with 15 inch barrel.

Winchester, Model 1892 carbine, serial numbers 268828, 583403, 820170, 921643 and 948932.

Winchester Model 1892 carbine, caliber .44 WCF, with 15 inch barrel, serial numbers 381573, 95516, 977103, 998059, 998461 and 998679.

Winchester Model 1894 carbine, serial numbers, 542097 and 589609 caliber .25-35 WCF, with 15 inch barrel.

Winchester, Model 1894 carbine, serial numbers 505307, 793359 and 864415, caliber .30 WCF, with 14 inch barrel.

Winchester, Model 1894 carbine, serial number 781211, caliber .32 Winchester Special, with 14 inch barrel.

Winchester, Model 1894 carbine, serial numbers 433426, 444269, 464604, 467286, 593839, 662192, 794467, 820101, 840123, 868769, 880845, 883055, 884272, 887409, 938370, 959421, 986621, 990851, 991114, 995675, 1004958, 1033973, 1033898, 1034037, 1017950, 1040905, 1046737, 1052851, 1066951, 1068292 and 1072755 caliber .30 WCF with 15 inch barrel.

Winchester, Model 1894 carbine, caliber .30-30, serial number 701730, with 15 inch barrel.

Winchester, Model 1894 carbine, caliber .38-55 WCF, serial number 247646, with 15 inch barrel.

Category 4

Browning Hi-Power 9mm pistol with a detachable shoulder stock.

French 25mm antitank cannon SA-L mle. 1937, commonly known as French Models 34SA and 37A.

Franchi Model 1962 Semiautomatic carbines, caliber 9mm.

Federal Laboratories 12 Gauge Gas Billy, all variations.

German, BUCO hand firing device, caliber 12mm (.44 caliber).

German 7.5cm Pak 40 anti-tank gun (75mm).

German 7.5cm Pak 39 anti-tank gun (75mm).

German 7.5cm Stu.K 40 assault gun (75 mm).

German 7.5cm Kw.K 40 tank gun (75mm).

H&A. A. Company 16 gauge trap gun.

Italian Cannone anticarro e d'accompagnamento 47/32 MI935, caliber 47mm, all variations and manufacturers.

Marble's Game Getter Firearms, with a combination of .44 caliber .410 gauge smooth bore and .22 caliber barrels, both 1st and 2nd Models, with barrel lengths of less than 18 inches, manufactured by the Marble Arms Corporation of Gladstone, Michigan, prior to 1943.

Oerlikon 20mm Automatic Cannon, all variations manufactured in the United States prior to 1946.

Swedish Model M-42 20mm recoilless anti-tank rifles.

Swedish 3.7cm Bofors anti-tank guns produced prior to 1946, including the following variations or designations; Swedish Bofors, 37mm, anti-tank cannon, German 3.7cm, Pak 157(b) anti-tank gun (captured Danish guns), Polish 37mm, Armata Przeciwpancerna Wz 36, British Ordnance Q. F. 37mm Mk 1, anti-tank gun.

Thompson submachineguns including all models, prototypes, and variations actually manufactured in or before 1945.

Unknown manufacture 12 gauge bird scaring device consisting of 12 barrels operated by a clock mechanism.

U.S. Browning Model 1919, caliber .30, machineguns, produced by various U.S. Government contractors prior to 1946, all variations.

U.S. M6 survival rifle/shotgun, caliber .22/.410 gauge, having 14 or 14-½ inch barrels and produced by various U.S. Government contractors.

U.S. Model T-48 assult rifles, caliber 7.62mm, manufactured by Harrington and Richardson.

Announcement 82–41

Suspension of Permit
Offer in Compromise

ATF has found Tri-L Distributors, Inc., Tustin, California, in violation of 26 U.S.C. 5061, 5201, 5204, 5206, 5207, 5213, 5215, 5301, 5555 and 27 U.S.C. 205(e) for numerous labelling, gauging, recordkeeping, reporting, dumping, proof testing, and case marking violations. As a result, ATF suspended Tri-L for seven consecutive days and accepted an offer in compromise of $100,000.

Announcement 82–42

Suspension of Permit

ATF suspended the basic permits of Mid-Continent Distributors, Inc., North Kansas City, Missouri, for a period of eleven consecutive days. The permittee violated the provisions of 26 U.S.C. 5114(a) and 5146(a) by falsifying on numerous occasions distilled spirits records of disposition and by refusing ATF officials entry for the purpose of examining required disposition records.

Announcement 82–43

Offer in Compromise

ATF has accepted an offer in compromise of $1,964 from Italian Swiss Colony, Asti, California. The offer was accepted as a result of the proponent's failure to timely file and timely pay its distilled spirits taxes due for a 15-day period.

Announcement 82–44

Offer in Compromise

An offer in compromise of $678.46 was accepted by ATF from Weibel Incorporated, Fremont, California. Weibel failed to timely file and timely pay its wine taxes for a 15-day tax period in violation of 26 U.S.C. 5061.

Announcement 82–45

Offer in Compromise

United Vintners, Madera, California, was found in violation of 26 U.S.C. 5061. ATF accepted an offer in compromise of $1,876. for penalties resulting from United Vintner's failure to timely file and pay its wine taxes due for a 15-day period.

Announcement 82–46

Offer in Compromise

ATF has accepted an offer in compromise of $3,000 from the Jackson Distributing Company, Kansas City, Missouri. The proponent was found in violation of 26 U.S.C. 5114(a)(1), 5146(a), 5603(b)(1), 5603(b)(5), and 5604(a)(16) and 27 U.S.C. 204(c) and 204(g) for (1) failure to prepare and maintain daily distilled spirits records, (2) failure to maintain proper labelling records, (3) unlawful removal of brand labels from bottles of distilled spirits and, (4) failure to give timely notification of changes affecting ownership.

Announcement 82–47

Offer in Compromise

Berberichs Delivery Company, Inc. d/b/a Hotel Governor, Jefferson City, Missouri, was found by ATF to be in violation of 26 U.S.C. 5301(c)(2). The proponent had in its possession seven liquor bottles the contents of which had been altered and/or refilled. ATF accepted an offer in compromise of $350.

Announcement 82–48

Offer in Compromise

ATF has found Larry Mullin dba Bermuda Triangle, Reno, Nevada, in violation of 26 U.S.C. 5301(c). The proponent had in its possession nine liquor bottles the contents of which had been altered and/or refilled. ATF accepted an offer in compromise of $450.

Announcement 82–49

Offer in Compromise

ATF recently accepted an offer in compromise of $1,000 from the Adolph Coors Company, Golden, Colorado. The brewery was found in violation of 26 U.S.C. 5056 and 5415 for failure to properly determine the quantity of keg beer returned to its premises.

Announcement 82–50

Offer in Compromise

An offer in compromise of $5,850 was accepted by ATF from NDC Distributors, Inc., Los Angeles, California, for violation of 26 U.S.C. 5061. NDC failed to timely file and timely pay its distilled spirits taxes due for a 15-day period.

Announcement 82–51

Offer in Compromise

Hawaiian Distillers, Honolulu, Hawaii submitted an offer in compromise of $270 for violations of 26 U.S.C. 5061. The proponent on five different occasions failed to timely file and timely pay its distilled spirits taxes due for a 15-day period.

Announcement 82–52

Revocation of Permits

Two wholesalers have had their permits revoked by ATF in accordance with 27 U.S.C. 204(e) of the FAA Act for failing to engage in operations authorized by their permits for a period of more than two years. The wholesalers were (1) Andrew Angals, dba Angals Wholesale Liquor, Phoenix, Arizona and (2) Lawrence A. Province, Melody K. Province, t/a Lawrence A. "Sunny" Province Beverage, Farrell, Pennsylvania.

Announcement 82–53

Revocation of Permits

ATF has revoked three importers' basic permits for failure to engage in operations authorized by their permits for a period of more than two years. These permits were revoked in accordance with 27 USC 204(e) of the FAA Act. The three importers were: (1) International Commerce Corporation, Bethesda, Maryland; (2) Charles F. and Cheryl Ann Walker, dba Devonshire, Ltd., Wilmette, Illinois; and (3) ZBH Products Inc., Carson, California.

Announcement 82–54

Unified Agenda of Federal Regulations

ATF published a notice in the Federal Register of October 28, 1982, the Unified Agenda of Federal Regulations. This notice concerns the Regulatory Reform Program which implements Executive Order 12291. The required unified agenda is designed to give the public adequate notice of ATF regulatory activities which will be under development and review during the period October 15, 1982 through April 15, 1983. Information concerning specific items appearing in the following unified agenda should be directed to the appropriate contact person indicated. The next unified agenda will be published in the Federal Register for April 15, 1983.

Part I—Current and Projected Rulemakings

ALCOHOL

Title: 100 and 375 ml Containers for Distilled Spirits

Agency Contact: Roger Bowling, ATF Specialist/Coordinator

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 5.47a

Legal Authority: 26 U.S.C. 5301, 27 U.S.C. 205.

Abstract: To provide for the bottling of distilled spirits in the proposed size; if adopted, will raise the total of authorized standards of fill to eight.

Timetable: NPRM published in the FR 8/16/82 (47 FR 35521); Comment period closes November 15, 1982; final action scheduled for the fall of 1983.

Title: Multi-vintage Dates and Percentages

Agency Contact: Roger Bowling, ATF Specialist/Coordinator

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR 4.28, 4.39, 4.64

Legal Authority: 27 U.S.C. 205.

Abstract: To provide for the labeling and advertising of the vintage dates and the percentages of each vintage which have been used to make a blended wine.

Timetable: ANPRM (Notice No. 357) published in FR, November 13, 1980 (45 FR 74942); NPRM published in FR, August 5, 1981 (46 FR 39849); final action scheduled for Winter of 1983/1984.

Title: Certificate of Bottling Date for Imports

Agency Contact: Roger Bowling, ATF Specialist/Coordinator

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 4

Legal Authority: 27 U.S.C. 205.

Abstract: Provides that wines imported on or after January 1, 1983, need not comply with the new labeling requirements and percentages if accompanied by a certificate certifying that the wine was bottled prior to January 1, 1983. These new labeling regulations affect varietal percentages, appellation of orgin percentages, use, and type size, name and address requirements, and estate bottling requirements.

Timetable: TD w/notice scheduled for publication in FR Winter 1982/83.

Title: Geographic Brand Names

Agency Contact: Roger Bowling, ATF Specialist/Coordinator

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 4.34, 4.39, and 4.35

Legal Authority: 27 U.S.C. 205.

Abstract: To extend the mandatory compliance date of January 1, 1983, to January 1, 1985, for the use of brand names that have geographical significance in relation to wines. (e.g., viticultural areas)

Timetable: NPRM scheduled for publication in the FR Winter of 1982/83.

Title: Vintage Wine (cider)

Agency Contact: Roger Bowling, ATF Specialist/Coordinator

Effects on Small Business and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 4

Legal Authority: 27 U.S.C. 205.

Abstract: To extend the eligibility for vintage labeling to Class 5, fruit wines.

Timetable: NPRM published in the FR November 5, 1981 (46 FR 54963) final action scheduled for Spring 1983.

Title: Wawszkiewicz v. Department of the Treasury et al., 670 F.2d 296 (D.C. CIR 1979)

Agency Contact: Roger Bowling, ATF Specialist/Coordinator

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 4

Legal Authority: 27 U.S.C. 205.

Abstract: Defers mandatory compliance dates of name and address requirements and appellation-of-origin type size. Due to the Court of Appeals decision, the regulations have been remanded to ATF for review and reconsideration.

Timetable: NPRM scheduled for publication in FR Winter of 1982/1983.

Title: Implementation of the "Wine Impact Bill" (Pub. L. 96-598)

Agency Contact: John Linthicum, ATF Specialist

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR 19.11, 37-40, 42, 346, 372, 402, 505, 566, 681, 748, 763, 764, 778-780 and Subpart Z; 197.105, 109, 115, 130, and 130b; 250.11, Subpart Ea, and Subpart Ja; 251.11, 40, Subpart Da; 252.195b and 304.

Legal Authority: 26 U.S.C. 5010.

Abstract: Restores the tax system which existed for distilled spirits products containing wine or alcoholic flavoring materials prior to the enactment of the Distilled Spirits Tax Revision Act of 1979; also permits spirits bottled for industrial purposes to be transferred in bond between distilled spirits plants.

Timetable: TD with Notice scheduled for publication Summer of 1983.

Title: Proposed Viticultural Areas by Petition

Agency Contact: Refer to the names in parentheses in the list below.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 9

Legal Authority: 27 U.S.C. 205.

Abstract: Establishes American viticultural areas for purposes of labeling and advertising of wine.

Timetable: Refer to the following list of petitioned American viticultural areas:

Under Consideration

Title and Timetable

Alexander Valley, CA (Jim Whitley): NPRM published in the FR on August 19, 1982 (47 FR 35521); comment period closes October 18, 1982; final action scheduled for the fall of 1983.

Carmel Valley, CA (John Linthicum): NPRM published in the FR on August 26, 1982 (47 FR 37588); comment period closes September 24, 1982; final action scheduled for the Spring of 1983.

Central Delaware Valley, PA and NJ (Steve Simon): NPRM published in the FR on December 4, 1981 (46 FR 59276); comment period closed March 4, 1982; final action scheduled for the Spring of 1983.

Chalk Hill, CA (Jim Whitley): NPRM published in the FR on May 12, 1982 (47 FR 20321); comment period closed July 12, 1982; final action scheduled for Spring of 1983.

Cole Ranch, CA (Steve Simon): NPRM published in the FR on December 4, 1981 (46 FR 59273); comment period closed March 4, 1982; final action scheduled for Winter of 1982/1983.

Green Valley of Solano, CA (Robert White): NPRM published in the FR on January 11, 1981 (47 FR 1149); comment period closed March 12, 1982; final action scheduled for Spring of 1983.

Loramie Creek, OH (Lori Weins): NPRM published in the FR September 1, 1982 (47 FR 38553); comment period closed October 1, 1982; final action scheduled for Winter 1982.

Los Carneros, CA (Steve Simon): Amended NPRM published in the FR on June 4, 1982 (47 FR 24344); comment period closed August 3, 1982; final action scheduled for the Fall of 1983.

Madera, CA (Norman Blake): NPRM published in the FR on January 26, 1982 (46 FR 3564); comment period ended March 12, 1982. Request for public hearing submitted by Portuguese government to further explain their objection, based on recognition of "Madera" by ATF as a semi-generic appellation. Request is currently being considered; final action scheduled for the Fall of 1983.

North Coast, CA (Charles Bacon): Amended NPRM published in the FR on January 11, 1982 (47 FR 1151); comment period ended February 25, 1982; final action scheduled for the Spring of 1983.

North Fork of the Roanoke, VA (James Hunt): NPRM published in the FR on July 27, 1982 (47 FR 32448); comment period ended August 26, 1982; final action scheduled for Winter 1982/83.

Rocky Knob, VA (James Hunt): NPRM published in the FR on November 19, 1981 (46 FR 56828); comment period ended February 27, 1982; final action scheduled for the Spring of 1983.

Shenandoah Valley, VA and WVA (James Hunt): NPRM published in the FR on August 20, 1982 (47 FR 36445); comment period ended October 4, 1982; final action scheduled for the Fall 1982.

Shenandoah Valley, Va (James Hunt): Notice of hearings published in the FR on October 30, 1981 (46 FR 53691); hearings held on December 7 and 8, 1981; and on January 12 and 13, 1982; final action scheduled for the Fall of 1982.

Suisun Valley, CA (Robert White): NPRM published in the FR on January 11, 1982 (47 FR 1153); comment period ended March 12, 1982; final action scheduled for the Spring of 1983.

Temecula, Murrieta and Rancho California, CA (John Linthicum): NPRM published in the FR on July 27, 1982 (47 FR 32450); comment period ends September 10, 1982; final action scheduled for Spring of 1983.

Under Development (Petitions Received and Being Processed)

Title/Agency Contact and Timetable

Anderson Valley, CA (Robert White): NPRM scheduled for publication in the FR Spring of 1983.

Arkansas Mountain, AR (Steve Simon): NPRM scheduled for publication in the FR Fall of 1983.

Altus, AR (Steve Simon): NPRM scheduled for publication in the FR Spring of 1983.

Arroyo Seco, CA (Charles Bacon): NPRM scheduled for publication in the FR Winter of 1982/83.

Catoctin, MD (Jim Whitley): NPRM scheduled for publication in the FR Winter of 1982/83.

Central Coast, CA (John Linthicum): NPRM scheduled for publication in the FR Summer of 1983.

Clarksburg, CA (Jim Whitley): NPRM scheduled for publication in the FR Summer of 1983.

Clear Lake, CA (Jim Whitley): NPRM scheduled for publication in the FR Fall of 1983.

Columbia Valley, WA (Charles Bacon): NPRM scheduled for publication in the FR Spring of 1983.

Dry Creek Valley, CA (Jim Whitley): NPRM scheduled for publication in the FR Spring of 1983.

El Dorado, CA (James Hunt): NPRM scheduled for publication in the FR Winter of 1982/83.

Fiddletown, CA (James Hunt): NPRM scheduled for publication in the FR Spring of 1983.

Grand River Valley, OH (John Linthicum): NPRM scheduled for publication in the FR Summer of 1983.

Green Valley of Sonoma, CA (Robert White): NPRM scheduled for publication in the FR Winter of 1982/83.

Hermann, MO (Norman Blake): NPRM scheduled for publication in the FR Spring of 1983.

King City, CA (Charles Bacon): NPRM scheduled for publication in the FR Fall of 1983.

Knights Valley, CA (Jim Whitley): NPRM scheduled for publication in the FR Spring of 1983.

Lake Michigan Shore, MI (Norman Blake): NPRM scheduled for publication in the FR Summer of 1983.

Lake Erie, NY, PA, and OH (Robert White): NPRM scheduled for publication in the FR Summer of 1983.

Linganore, MD (Jim Whitley): NPRM scheduled for publication in the FR Winter of 1982/83.

Lodi, CA (Robert White): NPRM scheduled for publication in the FR Summer of 1983.

Martha's Vineyard, MA (Charles Bacon): NPRM scheduled for publication in the FR Spring of 1983.

Mendocino, CA (Robert White): NPRM scheduled for publication in the FR Summer of 1983.

Merritt Island, CA (Norman Blake): NPRM scheduled for publication in the FR Winter of 1982/83.

Mississippi Delta, MS (Steve Simon): NPRM scheduled for publication in the FR Spring of 1983.

Monterey, CA (Robert White): NPRM scheduled for publication in the FR Summer of 1983.

Monticello, VA (Norman Blake): NPRM scheduled for publication in the FR Winter of 1982/83.

New England South Coast, RI, MA, CT (Charles Bacon): NPRM scheduled for publication in the FR Summer of 1983.

Northern Sonoma, CA (John Linthicum): NPRM scheduled for publication in the FR Fall of 1983.

Ohio River Valley, IN, OH, WVA, KY (John Linthicum): NPRM scheduled for publication in the FR Spring of 1983.

Ozark Mountains, AR (Steve Simon): NPRM scheduled for publication in the FR Spring of 1983.

Pacheco Valley, CA (Steve Simon): NPRM scheduled for publication in the FR Summer of 1983.

Paso Robles, CA (Roger Bowling): NPRM scheduled for publication in the FR Spring of 1983.

Potter Valley, CA (James Hunt): NPRM scheduled for publication in the FR Spring of 1983.

Russian River Valley, CA (James Hunt): NPRM scheduled for publication in the FR Spring of 1983.

San Lucas, CA (Charles Bacon): NPRM scheduled for publication in the FR Fall of 1983.

Santa Ynez Valley, CA (Charles Bacon): NPRM scheduled for publication in the FR Winter of 1982/83.

Sobre Vista Vineyards, CA (John Linthicum): NPRM scheduled for publication in the FR Spring of 1983.

Sonoma Mountain, CA (John Linthicum): NPRM scheduled for publication in the FR Spring of 1983.

Umpqua Valley, OR (Robert White): NPRM scheduled for publication in the FR Summer of 1983.

Walla Walla Valley, WA (Norman Blake): NPRM scheduled for publication in the FR Summer of 1983.

Williamette Valley, OR (Norman Blake): NPRM scheduled for publication in the FR Summer of 1983.

Willow Creek, CA (Roger Bowling): NPRM scheduled for publication in the FR Spring of 1983.

Yakima Valley, WA (Charles Bacon): NPRM scheduled for publication in the FR Spring of 1983.

York Mountain, CA (James Hunt): NPRM scheduled for publication in the FR Spring of 1983.

Title: Implementation of the Distilled Spirits Tax Revision Act of 1979 and Vinegar Regulations

Agency Contact: Robert Daugherty.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 5, 13, 19, 170, 173, 194, 195, 196, 197, 200, 211, 212, 213, 231, 240, 250, 251 and 252.

Legal Authority: 26 U.S.C. Chapter 51, as amended.

Abstract: Eliminates the wine gallon method of imposing the distilled spirits tax and the rectification tax; converts DSP from the former distilled spirits tax system to an all-in-bond tax system; incorporates other amendments from prior projects.

Timetable: NPRM published in the FR July 18, 1979. Temporary Regulations published in the FR December 11, 1979; final action scheduled for Spring 1983.

Title: Reporting Taxes Due to the Governments of Puerto Rico and the Virgin Islands

Agency Contact: John Linthicum.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 19.377.

Legal Authority: 26 U.S.C. 5555, 26 U.S.C. 5207.

Abstract: Changes the reporting requirements for most Puerto Rican and Virgin Islands spirits bottled at domestic distilled spirits plants from the point these spirits enter the processing account to the point of tax determination.

Timetable: NPRM published in the FR April 13, 1981 (46 FR 2164); final action scheduled for Spring of 1983.

Title: Standard of Identity for Vodka

Agency Contact: Charles Bacon.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 5.22.

Legal Authority: 27 U.S.C. 205.

Abstract: Considers clarifying the standard of identity for vodka or adding another type of vodka which would provide for the addition of sugar and citric acid.

Timetable: ANPRM published in the FR on January 11, 1982 (47 FR 1148); Extended comment period closed July 11, 1982; final action scheduled for Spring of 1984.

Title: Restoration of Water Lost in Heat Evaporation of Standard Wine Under a Vacuum

Agency Contact: Mike Breen, ATF Specialist.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 4, 27 CFR 240.

Legal Authority: 26 U.S.C. 5382.

Abstract: Clarifies regulations relating to the addition of water to wine and to reflect technological advances in the wine industry since the regulations were last revised.

Timetable: NPRM published in the FR July 27, 1982 (47 FR 32447); comment period closed September 27, 1982; final action scheduled for Spring 1983.

Title: Materials and Processes for the Production and Treatment of Wine

Agency Contact: Mike Breen, ATF Specialist.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 240.

Legal Authority: 27 U.S.C. 5382.

Abstract: Updates, clarifies, and simplifies the regulations relating to the production and treatment of wine.

Timetable: NPRM published in the FR June 18, 1982 (47 FR 26399); comment period closed August 17, 1982; final action scheduled for Fall 1983.

PROCEDURES AND PRACTICES

Title: Electronic Fund Transfer of Alcohol and Tobacco Products Excise Taxpayments

Agency Contact: James Hunt, ATF Specialist/Coordinator.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 19, 70, 170, 240, 245, 270 and 275.

Legal Authority: 26 U.S.C. 5061(a), 503(b), and 7805.

Abstract: Requires that certain taxpayers make their taxpayments by electronic fund transfer directly to financial institutions.

Timetable: NPRM Published in FR June 6, 1980; TD implementing EFT published in FR January 13, 1981; TD to delay effective date published in FR 6-1-81.

TOBACCO PRODUCTS

Title: Tobacco Products Excise Tax Acceleration Project

Agency Contact: James Hunt, ATF Specialist/Coordinator.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 270 and 275.

Legal Authority: 26 U.S.C. 5061(a), 5703(b), and 7805.

Abstract: Changes the deferral and return periods for excise taxpayments made by the large tobacco products taxpayers.

Timetable: Project being held in abeyance.

Part II—Reviews of Existing Regulations

Title: Health Hazards Related to Alcohol Consumption

Agency Contact: Candace Moberly.

Effects on Small Business and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 4, 5, and 7 (entire part).

Legal Authority: Federal Alcohol Administration Act.

Abstract: To monitor the efforts of the beverage alcohol industry in their public awareness campaign on health hazard issues related to alcohol consumption in lieu of regulatory requirement to provide health warning statements on beverage alcohol products.

Timetable: Final action undetermined.

Title: Advertising of Wine, Distilled Spirits, and Malt Beverages

Agency Contact: Roger Bowling, ATF Specialist/Coordinator.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 4, 5, 7.

Legal Authority: 27 U.S.C. 205.

Abstract: To modernize the advertising regulations under section 5(f) of the Federal Alcohol Administration Act.

Timetable: ANPRM (Notice No. 313) published in FR, November 21, 1978; comment period ended March 23, 1979; NPRM published in FR, December 19, 1980; comment period ended March 19, 1981; notice of hearings published in FR July 20, 1981; Hearings held September 9-10 and December 10-11; Notice reopening comment period published in FR March 19, 1982; comment period ended April 19, 1982; final action scheduled for Fall of 1983.

Title: Recodification of 27 CFR Part 4

Agency Contact: Roger Bowling, ATF Specialist/Coordinator; Norman Blake, ATF Specialist/Coordinator.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 4.

Legal Authority: 27 U.S.C. 205.

Abstract: To revise the wine labeling and advertising regulations; where applicable, to incorporate production regulations; and due to statutory amendments requested, may result in a legislative submission.

Timetable: NPRM scheduled for publication in the FR Spring of 1983.

Title: Distilled Spirits Liquor Bottles

Agency Contact: Robert White, ATF Specialist.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 19, 173, 194, 250, 251.

Legal Authority: 26 U.S.C. 5301 and 7805.

Abstract: To eliminate registration of liquor bottle manufacturers with ATF; to amend the Liquor Bottle indicia requirements and to simplify procedures for approval of distinctive liquor bottles by ATF.

Timetable: NPRM (Notice No. 382) published in FR September 2, 1981; comment period ended December 1, 1981; final action scheduled for Winter of 1982/83.

Title: Wholesale and Retail Liquor Dealers; Elimination of Public Use Forms

Agency Contact: Norman Blake, ATF Specialist/Coordinator.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 194.110 and Subpart 0; 250.165, 274, 275; 251.135 and 136.

Legal Authority: 26 U.S.C. 5114.

Abstract: To eliminate two public use forms and other recordkeeping requirements currently required of wholesale and retail liquor dealers and importers; to incorporate adjusted interest rates charged on special (occupational) tax.

Timetable: NPRM (Notice No. 383) published in **Federal Register** September 18, 1981; comment period closed December 17, 1981; final action scheduled for Winter 1982/83.

Title: Nonbeverage Drawback

Agency Contact: Steve Simon, ATF Specialist.

Effects on Small Businesses and Other Entities: This regulation affects approximately 500 entities.

CFR Citation: 27 CFR Part 197.

Legal Authority: 26 U.S.C. 5131 *et seq.*

Abstract: To update, clarify, simplify, and recodify the regulations relating to drawback of tax on distilled spirits used in the manufacture of non-beverage products.

Timetable: NPRM scheduled for publication in the **Federal Register** Summer of 1983.

Title: Recodification of 27 CFR Parts 211 and 213 as 27 CFR Parts 20 and 22

Agency Contact: Norman Blake, ATF, Specialist/Coordinator or John Linthicum, ATF Specialist.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 211 and 213.

Legal Authority: 26 U.S.C. 5272.

Abstract: To liberalize the qualification, bonding, operational, recordkeeping, and reporting requirements imposed on users and dealers of specially denatured spirits and users of tax-free alcohol.

Timetable: NPRM (Notice No. 389) published in **Federal Register** October 23, 1981; comment period closed January 21, 1982; final action scheduled for Fall 1983.

Title: Formulas for Denatured Alcohol and Rum

Agency Contact: Steve Simon, ATF Specialist.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 212.

Legal Authority: 26 U.S.C. 5241.

Abstract: To update, clarify, simplify, and recodify the regulations relating to formulas for denatured alcohol and rum.

Timetable: NPRM (Notice No. 364) published in **Federal Register** January 29, 1981; comment period closed March 30, 1981; final action scheduled for Spring 1983.

Title: Recodification of Wine Regulations (Subpart XX)

Agency Contact: James Hunt, ATF Specialist/Coordinator.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 170 (Subpart Z), 231 and 240 as 27 CFR Part 24.

Legal Authority: 26 U.S.C. 7805.

Abstract: To update, simplify, and clarify regulations relating to wine; and to incorporate ATF Rulings.

Timetable: NPRM scheduled for publication Spring of 1983.

Title: Recodification of Beer Regulations

Agency Contact: Charles Bacon, ATF Specialist/Coordinator.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 245.

Legal Authority: 26 U.S.C. 5051 *et seq.* and 26 U.S.C. 5401 *et seq.*

Abstract: To simplify and clarify regulations relating to the production and taxpayment of beer; to simplify and reduce paperwork and recordkeeping requirements imposed on industry; and to reflect technological advances in the beer industry since the regulations were last revised.

Timetable: NPRM scheduled for publication in the winter of 1982/83.

Title: U.S. Customs Service Certification on Distilled Spirits from Puerto Rico

Agency Contact: Robert White, ATF Specialist.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 250.

Legal Authority: 26 U.S.C. 7805.

Abstract: To change the U.S. Customs Service Certification on distilled spirits entering the United States from Puerto Rico.

Timetable: NPRM scheduled for publication in the **Federal Register** Fall of 1983.

PROCEDURES AND PRACTICES

Title: Losses Resulting from Disaster, Vandalism, or Malicious Mischief

Agency Contact: Jim Whitley, ATF Specialist.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Part 170. (Subpart O) redesignated as 27 CFR Part 29 (Subpart A).

Legal Authority: 26 U.S.C. 5064 and 26 U.S.C. 7805.

Abstract: To streamline the processing of claims for customs duties and other miscellaneous amendments.

Timetable: NPRM publication in the **Federal Register** for the Spring of 1983.

TOBACCO PRODUCTS

Title: Shipment of Tobacco Articles from Puerto Rico to the United States and Related Amendments

Agency Contact: John Linthicum, ATF Specialist.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 270.187, 202; 275.11, 85, 101-114a, 117, 118, 121, 124, 135-142, 181, 183.

Legal Authority: 26 U.S.C. 7651.

Abstract: To eliminate U.S. Customs Service involvement in the shipment of Puerto Rican tobacco products to the United States and to eliminate direct ATF Supervision of Tobacco product shipments from Puerto Rico.

Timetable: NPRM scheduled for publication in the **Federal Register** Fall of 1983.

Title: Manufacturer's Identification on Tobacco Products Packages

Agency Contact: Steve Simon, ATF Specialist.

Effects on Small Businesses and Other Entities: None anticipated.

CFR Citation: 27 CFR Parts 270.11, 212; 275.163, 170, 172, 174; 290.11, 181, 185 and Subpart L; 295.42.

Legal Authority: 26 U.S.C. 5723.

Abstract: To liberalize requirements relating to manufacturer identification on tobacco products packages and to make other miscellaneous changes.

Timetable: NPRM scheduled for publication in the **Federal Register** Winter of 1982/83.

Part III—Completed Actions

Title: Transfer of Wine, Without Payment of Tax to Customs Bonded Warehouses

Agency Contact: Steve Simon, ATF Specialist.

FR Citation: 47 FR 20302.

Date of Final Action: May 12, 1982.

Type of Final Action: Treasury Decision (final rule); T.D. ATF-100.

Title: Edna Valley, CA—Viticultural Area

Agency Contact: Robert White, ATF Specialist.

FR Citation: 47 FR 20298.

Date of Final Action: May 12, 1982.

Type of Final Action: Treasury Decision (final rule); T.D. ATF-101.

Title: Lancaster Valley, PA—Viticultural Area

Agency Contact: Charles Bacon, ATF Specialist/Coordinator.

FR Citation: 47 FR 20300.

Date of Final Action: May 12, 1982.

Type of Final Action: Treasury Decision (final rule); T.D. ATF-102.

Title: Distribution and Use of Denatured Alcohol and Rum and Distribution and Use of Tax-Free Alcohol

Agency Contact: Norman Blake, ATF Specialist/Coordinator; John Linthicum, ATF Specialist.
FR Citation: 47 FR 22522.
Date of Final Action: May 25, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-103.

Title: Reduction of the Regulatory Requirements on Producers of Volatile Fruit Flavor Concentrate Plants

Agency Contact: Jim Whitley, ATF Specialist.
FR Citation: 47 FR 23920.
Date of Final Action: June 2, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-104.

Title: Hudson River Region, NY—Viticultural Area

Agency Contact: John Linthicum, ATF Specialist.
FR Citation: 47 FR 24293.
Date of Final Action: June 4, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-105

Title: Lime Kiln Valley, CA—Viticultural Area

Agency Contact: Roger Bowling, ATF Specialist/Coordinator.
FR Citation: 47 FR 24295.
Date of Final Action: June 4, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-106.

Title: Chalone, CA—Viticultural Area

Agency Contact: Norman Blake, ATF Specialist/Coordinator.
FR Citation: 47 FR 25517.
Date of Final Action: June 14, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-107.

Title: Paicines, CA—Viticultural Area

Agency Contact: Robert White, ATF Specialist.
FR Citation: 47 FR 35480.
Date of Final Action: August 16, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-108.

Title: Cienega Valley, CA—Viticultural Area

Agency Contact: Robert White, ATF Specialist.
FR Citation: 47 FR 36125.
Date of Final Action: August 19, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-109.

Title: Isle St. George, OH—Viticultural Area

Agency Contact: Charles Bacon, ATF Specialist/Coordinator.
FR Citation: 47 FR 36419.
Date of Final Action: August 20, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-110.

Title: Tax Returns for the Payment of Alcohol and Tobacco Products Excise Tax

Agency Contact: John Linthicum, ATF Specialist.
FR Citation: 47 FR 38521.
Date of Final Action: September 1, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-111.

Title: Livermore Valley, CA—Viticultural Area

Agency Contact: Robert White, ATF Specialist.
FR Citation: 47 FR 38519.
Date of Final Action: September 1, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-112.

Title: Finger Lake, NY—Viticultural Area

Agency Contact: Norman Blake, ATF Specialist/Coordinator.
FR Citation: 47 FR 38516.
Date of Final Action: September 1, 1982.
Type of Final Action: Treasury Decision (final rule); T.D. ATF-113.

Title: Grape Brandy

Agency Contact: James Hunt, ATF Specialist/Coordinator.
FR Citation: 47 FR 38553.
Date of Final Action: September 1, 1982.
Type of Final Action: Notice of Withdrawal; Notice No. 421.

TABLE OF ABBREVIATIONS

Abbreviation	Meaning
ANPRM	Advance notice of proposed rulemaking.
ATF	Bureau of Alcohol, Tobacco and Firearms.
CFR	Code of Federal Regulations.
DSP	Distilled Spirits Plants.
E.O.	Executive Order.
FR	Federal Register.
FAA Act	Federal Alcohol Administration Act.

Abbreviation	Meaning
New	New regulation is proposed.
NPRM	Notice of proposed rulemaking.
OFR	Office of the Federal Register.
OMB	Office of Management and Budget.
Pub. L.	Public Law.
Res.	Rescission of an existing regulation.
Rev.	Revision or amendment of an existing regulation.
T.D.	Treasury decision.
T.D. with N.	(Temporary) Treasury decision with notice.
T.D. w/o N.	Treasury decision without notice.
Treasury	Department of the Treasury.

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Key to Abbreviations:

ATFP	ATF Procedure
ATFR	ATF Ruling
Ct.D	Court Decision
DO	Delegation Order
PL	Public Law
TD	Treasury Decision

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27 CFR 9.35 added; Edna Valley (T.D. ATF-101) 1982-2, 4

27 CFR 9.36 added; McDowell Valley (T.D. ATF-97) 1982-1, 5

27 CFR 9.38 added; Cienega Valley (T.D. ATF-109) 1982-3, 9

27 CFR 9.39 added; Paicines (T.D. ATF-108) 1982-3, 5

27 CFR 9.40 added; Leelanau Peninsula (T.D. ATF-99) 1982-2, 1

27 CFR 9.41 added; Lancaster Valley (T.D. ATF-102) 1982-2, 8

27 CFR 9.45 added; Suisun Valley (T.D. ATF-117) 1982-4, 15

27 CFR 9.46 added; Livermore Valley (T.D. ATF-112) 1982-3, 16

27 CFR 9.47 added; Hudson River Region (T.D. ATF-105) 1982-2, 13

27 CFR 9.51 added; Isle St. George (T.D. ATF-110) 1982-3, 13

27 CFR 9.62 added; Loramie Creek (T.D. ATF-118) 1982-4, 18

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